Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH B. LARSON, AND SNAP-ON TOOLS CORPORATION, PETITIONERS,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 3, 1944

CERTIORARI GRANTED OCTOBER 16, 1944

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No.

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.



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In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8392

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Plaintiff-Appellant,

vs.

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON and SNAP-ON TOOLS CORPORATION,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

THE BLAKELY PRINTING COMPANY, CHICAGO

TRANSCRIPT OF RECORD FILED AUG. 30, 1943.

PRINTED RECORD.

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8392

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Plaintiff-Appellant,

vs.

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON AND SNAP-ON TOOLS CORPORATION,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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UNITED STATES LETTERS PATENT.

No. 2,279,792—K. R. Larson, April 14, 1942 1148

No. 2,283,888—H. W. Zimmerman, May 19, 1942 1160

No. 22,219 (Reissue)—H. W. Zimmerman, November 3, 1942 1184

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Order allowing certiorari 1229

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Michael L. Igoe, District Judge of the United States for the Northern District of Illinois, on the twelfth day of July, in the year of our Lord one thousand nine hundred and forty-three, being one of the days of the regular July Term of said Court, begun Monday, the fifth day of July, and of our Independence the 168th year.

Present:

Honorable Michael L. Igoe, District Judge.
William H. McDonnell, U. S. Marshal.
Roy H. Johnson, Clerk.

2. IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

Automotive Maintenance Machinery Co, *vs.* Precision Instrument Manufacturing Company, Kenneth R. Larson and Walter A. Carlsen.	Civil Action No. 4382. Consolidated.
Snap-On Tools Corporation, a Delaware Corporation, *Petitioner,* *vs.* Automotive Maintenance Machinery Co., an Illinois corporation, *Respondent,* and Precision Instrument Manufacturing Company, an Illinois Corporation, *Intervenor.*	Civil Action No. 4451. (Consolidated With Civil Action No. 4382.)

Be It Remembered, that an Amended and Supplemental Complaint in Civil Action No. 4382 was filed in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 30th day of November, A. D. 1942, in words and figures following, to-wit:

3 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

AMENDED AND SUPPLEMENTAL COMPLAINT.

To the Honorable Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

Automotive Maintenance Machinery Co. brings this, its Amended and Supplemental Complaint, against Precision Instrument Manufacturing Company, Kenneth R. Larson and Walter A. Carlsen, and alleges as follows:

I.

The plaintiff, Automotive Maintenance Machinery Co., is a corporation duly organized and existing under the laws of the State of Illinois, with its principal place of business at North Chicago, County of Lake and State of Illinois.

II.

The defendant, Precision Instrument Manufacturing Company, is a corporation duly organized and existing under the laws of the State of Illinois, with its principal place of business at Des Plaines, County of Cook and State of Illinois, and it has a regular and established place of business in Des Plaines, County of Cook and State of Illinois, within the Northern District of Illinois, Eastern Division, where it has committed acts of infringement hereinafter complained of; and each of the defendants, Kenneth R. Larson and Walter A. Carlsen, is a citizen of the State of Illinois and is an inhabitant of said Eastern Division of the Northern District of Illinois and has a regular and established place of business therein, where each of said defendants has committed acts of infringement hereinafter complained of. The word "defendants", as hereinafter used in this Amended and Supplemental Complaint, shall mean all of the foregoing defendants, and each of them, jointly as well as severally.

III.

This is a suit arising under the United States Patent Laws for infringement of United States Letters Patent and for an accounting of profits and damages and for an injunction.

IV.

On January 13, 1942, United States Letters Patent No. 2,269,503 were duly and legally issued to plaintiff, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench, and on November 3, 1942, reissue of said patent was duly and legally issued to plaintiff as Letters Patent No. Re. 22,219; and since the respective

dates of issue of said Letters Patent plaintiff has been the sole and exclusive owner thereof, and still is the sole and exclusive owner of said reissue patent.

5

V.

On April 14, 1942, United States Letters Patent No. 2,279,792 were duly and legally issued to plaintiff, Automotive Maintenance Machinery Co., on an application filed by said Kenneth R. Larson for an invention in Torque Wrench; and since that date plaintiff has been and still is the sole and exclusive owner of said Letters Patent.

VI.

On May 19, 1942, United States Letters Patent No. 2,283,888 were duly and legally issued to plaintiff, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench; and since that date plaintiff has been and still is the sole and exclusive owner of said Letters Patent.

VII.

As of December 20, 1940, plaintiff, Automotive Maintenance Machinery Co., and defendant, Precision Instrument Manufacturing Company, and defendant, Kenneth R. Larson, entered into a certain agreement in and with respect to the inventions described and claimed in said Letters Patent Nos. Re. 22,219 (and the original thereof, No. 2,269,503), 2,279,792 and 2,283,888, and each of them, wherein said defendants, and each of them, inter alia, assigned to plaintiff their entire right, title and interest in and to the application of said Kenneth R. Larson upon which said Letters Patent No. 2,279,792 have issued, and agreed, upon completion of certain orders for wrenches on hand as of the date of said agreement, to discontinue the

6 manufacture and or sale and or use of torque wrenches embodying the inventions of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and further agreed that they would not thereafter, directly or indirectly, infringe said Letters Patent when they should issue and further agreed not to, directly or indirectly, contest the validity

of any claim or claims of said Letters Patent, or any of them; and the defendant, Walter A. Carlsen, was fully informed of said agreement at the time of its execution and participated in the negotiations terminating in the same and executed said agreement as Secretary of said Precision Instrument Manufacturing Company, all as shown by said agreement, a copy of which is attached hereto and marked Plaintiff's Exhibit 1.

VIII.

The said inventions described and claimed in said Letters Patent, and each of them, are of great utility and value; said inventions have been and are of great benefit and advantage to plaintiff and the public; and the trade and public, including said defendants, have acknowledged and acquiesced in the validity of said Letters Patent, and each of them, and in the aforesaid rights of plaintiff.

IX.

The defendants have been given written notice by plaintiff, Automotive Maintenance Machinery Co., of said Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503) and No. 2,279,792, and of their infringement thereof; and as to said Letters Patent Nos. 2,269,503,
7 2,279,792 and 2,283,888, defendants had knowledge of the applications maturing into the same, and as to said Letters Patent Nos. 2,269,503 and 2,283,888 plaintiff has placed the required statutory notice respecting the same on torque wrenches made and sold by plaintiff under said Letters Patent, which torque wrenches have been made and sold in large quantities by plaintiff.

X.

The defendants have, within the last six years, and prior to the filing of this Amended and Supplemental Complaint, and subsequent to the issue of said Letters Patent, and each of them, infringed said Letters Patent, and each of them, in defiance of plaintiff's rights acknowledged and acquiesced in by the defendants and further in violation of the terms and conditions of said agreement entered into as of December 20, 1940, and the defendants continue

to infringe said Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219, and each of them, by wilfully, maliciously and without the consent or license of plaintiff, making or causing to be made, selling or causing to be sold, and using or causing to be used, within the Northern District of Illinois, Eastern Division thereof, and elsewhere within the United States, torque wrenches made in accordance with and embodying the inventions of said Letters Patent.

XI.

Plaintiff is informed and believes, and therefore avers, that the defendants, Kenneth R. Larson and Walter A. Carlsen, have engaged jointly and severally with the defendant, Precision Instrument Manufacturing Company, in committing acts of infringement of said Letters Patent, and each of them; that said Kenneth R. Larson is President and a director of said defendant corporation and that said Walter A. Carlsen is a director and Secretary thereof; that said defendants, Kenneth R. Larson and Walter A. Carlsen, were and are two of the original incorporators of said defendant corporation, caused the incorporation of said defendant corporation, and now own, and at all times since said incorporation have owned, a large part of the stock of said defendant corporation and are individually and personally responsible with said defendant corporation for the intentional, willful and malicious violation of plaintiff's rights, as herein set forth; and plaintiff further avers that said defendants, Kenneth R. Larson and Walter A. Carlsen, have at all times been fully conversant in and with respect to plaintiff's rights as herein set forth and each of them has personally participated in the acts of infringement complained of and the violation of the terms and conditions of said agreement.

Wherefore plaintiff, Automotive Maintenance Machinery Co., prays for a preliminary and final injunction against further infringement of said Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219, by the defendants, Precision Instrument Manufacturing Company, Kenneth R. Larson and Walter A. Carlsen, and those controlled by defendants, for an accounting of profits and damages, and for an assessment of costs herein; and plaintiff

further prays for such other and further relief as the Court may deem just.

Automotive Maintenance Machinery Co.,
By Davis, Lindsey, Smith & Shonts,
Its Attorneys,
332 South Michigan Avenue,
Chicago, Illinois.

Of Counsel:
Raymond E. Fidler,
Harry W. Lindsey, Jr.

(Plaintiff's Exhibit 1—Agreement dated December 20, 1940—not copied here.)

10 And afterwards on, to wit, the 8th day of February, 1943, came the Defendants in Civil Action No. 4382 by their attorney and filed in the Clerk's office of said Court their certain Amended Answer to Amended and Supplemental Complaint, in words and figures following, to wit:

11 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382)

AMENDED ANSWER OF DEFENDANTS TO AMENDED AND SUPPLEMENTAL COMPLAINT.

Now Come Defendants and file this their joint and several Amended Answer to the Amended and Supplemental Complaint filed herein on November 30, 1942, alleging:

1. Defendants admit the allegations of Paragraph I.

2. Defendants admit the allegations of residence and citizenship in Paragraph II, but deny that either of Defendants has committed any act of infringement, and deny that Defendant Larson has a place of business as alleged.

12 3. Defendants admit the allegations of Paragraph III.

4. Defendants admit that Letters Patent No. 2,269,503 were issued to Plaintiff on January 13, 1942, but deny that they were duly and legally issued. Defendants are not informed as to the ownership of said Letters Patent and therefore deny Plaintiff's allegations with respect thereto.

Defendants deny that Reissue Letters Patent 22,219 were legally issued, and deny that there existed any statutory grounds for the reissue of Letters Patent No. 2,269,503.

5. Defendants admit that Letters Patent No. 2,279,792 were issued to Plaintiff on April 14, 1942, but deny that they were duly and legally issued. Defendants are not informed as to the ownership of said Letters Patent, and therefore deny Plaintiff's allegations with respect thereof. Defendants deny that claims 31 and 32 were legally allowed, and allege that said claims are not supported by the specification and do not comply with R. S. 4888 (U. S. Code, Title 35, sec. 33).

6. Defendants admit that Letters Patent No. 2,283,888 were issued to Plaintiff on May 19, 1942, but deny that they were duly and legally issued. Defendants are not informed as to the ownership of said Letters Patent, and there-
13 fore deny Plaintiff's allegations with respect thereto. Defendants deny that claim 38 was legally allowed, and allege that said claim is not supported by the specification and does not comply with R. S. 4888 (U. S. Code, Title 35, sec. 33).

7. a. Defendants admit that they did, on December 20, 1940, sign the document attached to Plaintiff's Complaint as Exhibit 1, but Defendants allege that at the time of the signing thereof not one of the three patents sued on herein had issued and that the alleged subject matter of said alleged contract was not in existence or certain, wherefore there was no contract of the scope and effect asserted by Plaintiff. Defendants further allege that said agreement did not contemplate or embrace Reissue Letters Patent No. 22,219.

b. Defendants allege that the application for Letters Patent No. 2,279,792 (herein called Larson application) was, by the United States Patent Office declared to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503 (herein called Zimmerman applications) in interference No. 77,565, in which the question to be determined was whether the party Larson had invented the subject matter of certain counts of said Interference prior to the party Zimmerman; in October, 1940, testi-
mony of several witnesses was taken under oath on
14 behalf of the party Larson at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois; Kenneth R. Larson, one of the witnesses,

did then and there knowingly falsely testify on his own behalf under oath, that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934, and that he had produced several models, which he identified, and a drawing which he identified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938; the issues to which said testimony so directed were critical issues in the interference and the testimony was material to said issue; said testimony constituted perjury under the statutes of the United States (Title 18, U. S. Code, sec. 231), and of the State of Illinois (Chap. 38, Ill. Rev. Stat., sec. 473); Plaintiff and its agents were aware that said testimony was false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Defendants transferred to Plaintiff the Larson application and the sum of $500, and executed the agreement, Exhibit 1, and Plaintiff promised to withhold its complaint and suppress the evidence of said perjury if the Larson application and the sum of $500 were transferred to Plaintiff and Defendants executed the agreement, Exhibit 1; whereupon in violation of law (Title 18, U. S. Code, sec. 250,251; Chap. 38, Ill. Rev. Stat., sec. 135) Plaintiff did procure the transfer to it of the Larson application and the sum of $500, and did procure the execution by Defendants of the agreement, Exhibit 1, and Plaintiff did thereafter suppress the evidence of said perjury and withhold making its complaint to the proper officers, and did thereby compound a crime in violation of the Statutes hereinabove referred to; wherefore said agreement, Exhibit 1, and the transaction of which it is a part, are unlawful, null, and void.

c. Defendants further allege that said agreement, Exhibit 1, includes a provision prohibiting Defendants from manufacturing and selling any torque wrenches, which are articles moving in interstate commerce, responding to the claims of the Letters Patent here in suit, and prohibits Defendants from contesting the validity of said patents, which prohibitions and covenants constitute restraints in violation of the Sherman Act (Title 15, U. S. Code, sec. 1) and are void unless sustained by valid patents; Defendants allege said patents are invalid and said agreement is therefore void.

8. Defendants deny the allegations of Paragraph VIII and allege that Plaintiff has been unable to make commercially satisfactory and accurate wrenches following the teachings of the three patents sued on herein, and that the wrenches made under said patents are inferior to those made and sold by Defendant, Precision Instrument Manufacturing Company, and Defendants deny that there has been any acquiescence in the asserted validity of said Letters Patent, or any of them.

9. Defendants are without knowledge of whether Plaintiff has made, sold, or marked any wrenches under said Letters Patent, and Defendants therefore deny the allegation, and Defendants deny that Plaintiff has ever given Defendants notice of any alleged infringement of any of said Letters Patent except No. 2,279,792, of which Plaintiff wrote Defendants on April 18, 1942, except by institution of this suit on June 15, 1942, in which only Letters Patent Nos. 2,279,792 and 2,283,888 were sued on, and no charge of infringement of Letters Patent No. 2,269,503 was made until the Amended Complaint was filed herein on July 22, 1942. Defendants deny that they have been given notice of alleged infringement of Reissue Letters Patent No. 22,219.

10. Defendants deny the allegations of Paragraph X.

11. Defendants deny that they have committed any acts of infringement and that Defendant Kenneth R. Larson has acted in any other manner than as an officer and employee of the corporate Defendant, Precision Instrument Manufacturing Company, and except for the allegations that Defendant Kenneth R. Larson is a stockholder, original incorporator, officer, and director of the corporate Defendant, Defendants deny each allegation of Paragraph XI.

12. Defendants allege that Precision Instrument Manufacturing Company has, through its employees, perfected a resistance-measuring wrench which said company has subsequently manufactured and sold in large quantities, that said wrench embodies a new principle of design and operation never theretofore incorporated into a similar instrument, that Plaintiff has for many years without success sought to produce a satisfactory resistance-measuring wrench and has produced a large number of different designs of resistance-measuring wrenches upon which Plaintiff has procured a large number of patents in an effort to

prevent others from manufacturing a satisfactory resistance-measuring wrench; that when in October, 1941, Defendant Precision Instrument Manufacturing Company publicly offered its wrench, Plaintiff's attorneys procured a specimen thereof and, with this specimen before Plaintiff's attorneys, said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to purport to embrace the Precision wrench, in violation of the Patent Act (Title 35, U. S. Code, sec. 33; R. S. 4888), which claims Plaintiff's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States Letters Patent Nos. 2,279,792 and 2,283,888, and subsequently Plaintiff unlawfully procured Reissue Letters Patent No. 22,219, all for the sole purpose of procuring claims in said Letters Patent that might be sufficiently vague in terms as to appear to cover the resistance-measuring wrenches being made and sold by the corporate Defendant and to give color to this suit for alleged infringement, whereas Plaintiff and its attorneys well knew that said wrenches were not the invention of the applicants for said Letters Patent, but involved an entirely different principle of construction and operation.

13. Defendants allege that Plaintiff has, by the devices alleged in Paragraphs 7b, 7c, and 12 hereof, attempted to monopolize the manufacture and sale of resistance-measuring wrenches, which move in interstate commerce, and has sought to procure patents covering devices which were not the inventions of the applicants for patents into whose applications Plaintiff has inserted claims pretending to cover the inventions of others.

14. Defendants allege that Plaintiff, because of the matters alleged in Paragraphs 7b, 7c, 12, and 13 hereof, as well as other inequitable conduct, comes into this Court with unclean hands and may not maintain this suit.

15. Defendants allege that the claims herein asserted against the resistance-measuring wrenches made and sold by the corporate Defendant herein do not read upon said wrenches and are not infringed thereby because of the restricted meaning which must be given said claims in the light of the respective specifications of each of the Letters Patent sued upon, the amendments made to such claims, and the cancellations made of other claims during the

prosecution of the respective applications for said Letters Patent, and the existing art of resistance-measuring wrenches extant at the time of the alleged inventions of said Letters Patent and in part represented by the wrenches described in the following Letters Patent:

	Number	Date	Patentee
U. S.	78,604	June 2, 1868	O'Neil
	164,100	June 8, 1875	Plymale
	641,495	Jan. 9, 1900	Culmer et al.
	832,064	Oct. 2, 1906	Keeler
	1,294,171	Feb. 11, 1919	Rockwell
	1,512,192	Oct. 21, 1924	Benko
	1,664,776	Apr. 3, 1928	Heise
	1,728,552	Sept. 17, 1929	Kennedy et al.
	1,809,087	June 9, 1931	Watrous
	1,825,539	Sept. 29, 1931	Patton
	1,830,997	Nov. 10, 1931	Gumprich
	1,900,581	Mar. 7, 1933	Oliver
	1,925,219	Sept. 5, 1933	Weight.
	2,007,880	July 9, 1935	Sharp
	2,063,622	Dec. 8, 1936	Pfeiffer
	2,074,079	Mar. 16, 1937	Bahr et al.
	2,115,955	May 3, 1938	Johnson
	2,144,731	Jan. 24, 1939	Zimmerman
	2,159,354	May 23, 1939	Dunn
	2,159,373	May 23, 1939	Dunn.
	2,167,720	Aug. 1, 1939	Kress
	2,171,872	Sept. 5, 1939	Zimmerman
	2,183,633	Dec. 19, 1939	Zimmerman
	2,190,966	Feb. 20, 1940	Zimmerman
	2,199,553	May 7, 1940	Zimmerman
	2,206,315	July 2, 1940	Zimmerman
	2,211,401	Aug. 13, 1940	Zimmerman
	2,231,240	Feb. 11, 1941	Zimmerman
	2,260,358	Oct. 28, 1941	Zimmerman
	2,279,792	Apr. 14, 1942	Larson
	2,283,707	May 19, 1942	Sturtevant
	2,283,888	May 19, 1942	Zimmerman
British	399,901	1933	Battio et al.
	423,477	1935	Salle
French	621,277	Sept. 11, 1926	Vergne

16. Defendants allege that the resistance-measuring wrench business of Precision Instrument Manufacturing

Company is wholly devoted to the supplying of wrenches to the armed forces of the United States, and the defense industry of the United States, and that said Precision wrenches are practically indispensable to the maintenance of aircraft, marine engines, and mechanized war equipment, and that the restraints which Plaintiff is attempting to impose upon Defendants and the interference with Precision's business which Plaintiff is causing by the maintenance of this suit will seriously impair the defense of the United States, and so outweighs any asserted injury that might befall Plaintiff if this suit were not maintained that this Court of Equity should deny Plaintiff all relief.

17. Defendants further allege that substantially all the resistance-measuring wrenches being made and sold by Precision Instrument Manufacturing Company are being manufactured for the United States and its contracting agents, and that Plaintiff's only remedy for any alleged infringements of the Letters Patent sued upon herein by Precision's manufacture of such wrenches for the United States and its agents is by a suit against the United States in the Court of Claims.

18. Defendants further allege that when Plaintiff filed its application for Reissue Letters Patent No. 22,219, Defendant Precision Instrument Manufacturing Company had long been selling wrenches of the type accused in this suit, as Plaintiff well knew, which did not infringe any claim of the Letters Patent No. 2,269,503, which was subsequently reissued as Reissue No. 22,219, whereby Precision Instrument Manufacturing Company acquired intervening rights with respect to said Reissue Letters Patent, and cannot be held to infringe the claims thereof.

19. By the agreement, Plaintiff's Exhibit 1, pleaded by Plaintiff, Plaintiff licensed Defendant Precision Instrument Manufacturing Company, to make and sell six thousand (6,000) wrenches of the type then being made and sold by said Defendant in interstate commerce, which wrench was then not covered by any issued patent, and thereafter forbade Defendants from selling such wrenches, which are articles moving in interstate commerce; wherefore said agreement is in restraint of trade under the Sherman Antitrust Act of the United States (Act of July 2, 1890, c. 647, 26 Stat. 209), and is illegal, as Plaintiff did not, at the time of the execution of said agreement, and does not now, have any valid United States Letters Patent which

would support a restraint in interstate commerce. The Letters Patent upon which Plaintiff has brought this suit are invalid and void on the grounds that:

(a) The alleged inventions claimed therein do not constitute invention but merely changes common to those skilled in the art of wrench manufacture.

(b) The claims relied upon by Plaintiff herein are vague, indefinite, and ambiguous, and do not particularly point out and distinctly claim the part, improvement, or combination which the respective applicant for each patent claims as his invention or discovery, as required by R. S. 4888.

(c) The alleged inventions claimed in each of the patents in suit do not constitute invention over the disclosures of the patents set forth in Paragraph 15 hereof.

(d) The alleged inventions claimed in each of the patents in suit were not patentable because they were patented or described, prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, in the patents enumerated in Paragraph 15 hereof, and, prior to the alleged invention thereof by patentees Zimmerman and Larson, were invented by the patentees of the patents enumerated in said Paragraph 15, who reside at the respective residences named in their respective patents; and said alleged inventions were prior to the alleged invention thereof, or more than two years before the filing of the respective applications therefor,
23 invented by, known to, and publicly used and sold by Allen I. Dunn of Cedar Rapids, Iowa, Cedar Rapids Engineering Company of Cedar Rapids, Iowa, and Automotive Maintenance Machinery Company of North Chicago, Illinois.

(e) The alleged inventions claimed in claim 38 of Letters Patent No. 2,283,888 were not the inventions of Herman W. Zimmerman, who surreptitiously or unjustly obtained a patent therefor, but were in fact invented by Kenneth R. Larson of Des Plaines, Illinois, who was using reasonable diligence in adapting and perfecting the same.

20. Defendants allege that said Larson Patent No. 2,279,793 is invalid and void and this suit may not be maintained, because said patentee has claimed to be the original and first inventor of a material and substantial part of the thing patented of which he was not the original and first inventor, and that said patentee and his assignee have unreasonably neglected or delayed to enter a disclaimer as to

such parts of which patentee was not the original and first inventor.

Casper W. Ooms,
Attorney for Defendants.

February 8, 1943.

24 And afterwards on, to wit, the 1st day of March, 1943 came the Petitioner in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Third Amended Petition For Declaratory Decree, in words and figures following, to wit:

25 IN THE UNITED STATES DISTRICT COURT.

(Caption—4451)

THIRD AMENDATORY PETITION FOR DECLARATORY DECREE.

To The Honorable, The Judges Of The United States District Court, For The Northern District Of Illinois:

Petitioner, praying for the declaration and other relief sought herein, respectfully shows:

(1) That, petitioner, Snap-on Tools Corporation, is a corporation organized under and existing by virtue of the laws of the State of Delaware, and having its principal place of business at Kenosha, Wisconsin.

(2) That, respondent, Automotive Maintenance Machinery Co., is, upon information and belief, a corporation organized under and existing by virtue of the laws of the State of Illinois, and having its principal place of business at North Chicago, Illinois.

(3) That petitioner and respondent are separately engaged in making or selling, among other things, wrenches for measuring the extent to which nuts or other fasteners are turned to retain parts together with any desired or predetermined degree of tightness, and that petitioner
26 and respondent appeal to the same customers and prospective customers for the sale of their respective nut turning load measuring wrenches.

(4) That an actual controversy exists between petitioner and respondent, in that respondent, asserting to be the owner of United States Letters Patents Nos. Re. 22,219

(and the original thereof 2,269,503), 2,279,792 and 2,283,888 issued January 13, 1942, April 14, 1942, and May 19, 1942 respectively, (profert of copies of these patents are hereby made and attached hereto as Exhibits 1, 2, and 3 for identification), on to-wit July 22, 1942 with respect to Letters Patent No. 2,269,503 instituted suit against petitioner's suppliers of the alleged infringing measuring wrenches; that the aforesaid Letters Patent No. 2,269,503 was surrendered to the Commissioner of Patents on to wit January 24, 1942, and thereafter on to wit November 3, 1942 was reissued as Letters Patent No. 22,219; that on to wit April 18, 1942 with respect to Letters Patent No. 2,279,792 and on to wit July 7, 1942 with respect to Letters Patent No. 2,283,888, Respondent in writing charged petitioner with infringement of the aforesaid letters patents and violation of an agreement entered into between the parties on December 20, 1940, (a copy of said agreement being attached hereto and made a part hereof as Exhibit 4); that petitioner is the exclusive seller of measuring wrenches manufactured by the Precision Instrument Manufacturing Company of Des Plaines, Illinois, who has been charged to infringe and actually sued under all of the aforesaid letters patents, thereby creating a controversy with respect to all of the aforesaid letters patents in connection with

27 measuring wrenches exclusively sold by the petitioner; that respondent is representing to customers of petitioner and prospective purchasers of petitioner's wrenches which include the agencies of the United States Government making purchases for the armed forces of the United States, that petitioner's aforesaid wrenches infringe the claims of said respondent's letters patents; and that respondent further represents to petitioner and to the customers and prospective customers, that they are infringing said respondent's patents and violating the patent statutes of the United States by the sale of petitioner's said wrenches, respondent thus endeavoring to prevent and restrict the sale and use of petitioner's said wrenches which are vital to the present armament program and equipment of the United States.

(5) That no suit has been instituted by the respondent against petitioner, charging infringement of the aforesaid letters patents, but upon information and belief respondent has made representations, wholly without foundation, to petitioner's customers and prospective customers, to the

effect that a patent suit is pending between respondent and petitioner, and that a cease and desist order will soon be issued by the courts against petitioner who no longer will be able to sell its aforesaid wrenches, which representations have interfered and are interfering with the lawful conduct of this petitioner and causing petitioner's customers to delay, if not altogether stop, the purchase of the aforesaid wrenches to the petitioner's great and irreparable damage and to the detriment of the armament program of the United States.

(6) The jurisdiction of this Court is based upon the fact that the actual controversy existing between petitioner and respondent arises under the patent laws of the United States, and is a question of whether or not the afore-
23 said wrenches sold or offered for sale by petitioner infringe said respondent's patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888, and whether said patents are good and valid at law, questions which have been committed to the exclusive jurisdiction of the United States Courts.

(7) The jurisdiction of this Court as to the controversy existing between petitioner and respondent precipitated by the latter's written notice of petitioner's alleged violation of an existing agreement dated December 20, 1940 and predicated upon a patent application which eventuated into the aforesaid Letters Patent No. 2,279,792, is based upon diversity of citizenship of the respective parties and the amount involved exclusive of interest and costs, being in excess of three thousand dollars ($3000.00); and that the declaratory decree of this Court can become effective only by further relief in the form of an injunction to restrain respondent from making said baseless assertions pending the litigation, and after this Court has held that said patents are wholly invalid or are not infringed by petitioner and the aforesaid contract has not been violated.

(8) That petitioner's aforesaid wrenches sold or offered for sale by petitioner do not incorporate or embody the elements disclosed and claimed in the respondent's patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888 nor the principle of operation of the patented structures set forth and claimed in the aforesaid United States Letters Patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888; therefore, petitioner does not infringe said patents, nor violate

the aforesaid agreement prescribing that petitioner would not after a specified time sell wrenches embodying the invention set forth in the aforesaid letters patent.

(9) That the claims herein asserted against the resistance measuring wrenches sold by the petitioner herein, do not read upon said wrenches and are not infringed thereby because of the restricted meaning which must be given said claims in the light of the respective specifications, the amendments made to such claims and the cancellations of other claims made during the prosecution of the patent applications on which said letters patents Nos. Re. 22,219 (and the original thereof 2,269,503) 2,279,792 and 2,283,888 were issued, applicants for themselves and those claiming title through said respective applicants, were compelled by their respective self-defined conceptions and by the prior art recited in this petition and by their special procedure under Patent Office Rules 85 to 92 with respect to the reissue patent and Rule 78 with respect to the latter two patents, to so interpret and restrict the claims of said patents during the prosecution of said applications, that said claims became and are limited to a torque wrench containing or embodying a rockably mounted work engaging member or a torque resisting flexible beam or both of a particular type, mounting and movement constituting material limitations upon the invention not appearing or embodied in petitioner's entirely different wrench construction and principle of operation; that all the claims in their entirety as well as all of the elements of the claims of the respondent's patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792 and 2,283,888, are so limited and confined in scope under the requirements imposed by the Commissioner of Patents that the respondent did not then and cannot now seek to obtain a construction for such claims sufficiently broad to cover any device made, used or sold by the petitioner; that all the claims which respondent procured in its reissue No. 22,219 (and the original thereof 2,269,503) as well as in its patents 2,279,792 and 2,283,888 under Rule 78 when construed and interpreted in the light of the original disclosure, are for an entirely different invention and structure than embodied in petitioner's measuring wrenches; and that the Patent Office so narrowly construed the claims of the aforesaid letters patents as not to invoke Rules 93 and 94 which would otherwise require the declara-

tion of an interference with petitioner's allowed pending patent application illustrating and claiming the complaining resistance wrenches sold by petitioner.

(10) Petitioner is informed and believes and therefore avers that each of the aforesaid letters patents are invalid and void for the reason that the alleged invention thereof purported to be patented thereby are not the same as were disclosed in the application therefor as originally filed, but are substantially different from any invention indicated, described, or suggested in the original applications therefor; that the applications therefor, were amended in the claims during the prosecution thereof and the alleged patented subject matter is not supported by oath as required by law; that said applications were unlawfully enlarged by law during the prosecution thereof; and that the claims in suit of said letters patents are invalid and void for the reason that they include matter not shown or adequately described in said patents.

(11) That claims 31 and 32 of respondent's aforesaid letters patent No. 2,279,792 are for an entirely different alleged invention than originally described and claimed in the patent application eventuating into the aforesaid letters patent up to the date that all the claims comprising 1 to 30 inclusive, were allowed and the prosecution thereof was deemed officially closed by the United States Patent Office; that, thereafter on to-wit February 17, 1942 the applicant's assignee through its attorney presented claims 31 and 32 in an amendment under Rule 78 of the United States Patent Office which practice only permits the presentation of claims of the same or more limited scope than those theretofore presented and the subject matter of which would not require an additional search on the part of the Patent Office Examiner, but in spite of these restrictions and well knowing that claims 31 and 32 were for an entirely different structure and of much broader scope than the concept which was first disclosed and or described and or claimed in the application as originally filed for said letters patent, and these claims not being supported by the original oath, or by a supplemental oath, or by any oath whatsoever, or by a search at the instance of the Patent Office, are therefore void, invalid and of no effect.

(12) Petitioner further avers that claim 38 of respondent's aforesaid letters patent No. 2,238,888 is for an entirely different alleged invention than originally described

and claimed in the patent application eventuating into the aforesaid letters patent up to the date that all of the claims comprising 1 to 37 inclusive, were allowed and the prosecution thereof was deemed officially closed by the United States Patent Office; that, thereafter on to-wit April 2, 1942 the applicant's assignee through its attorney presented claim 38 in an amendment under Rule 78 of the United States Patent Office which practice only permits the presentation of claims of the same or more limited scope than those theretofore presented and the subject matter of which would not require an additional search on the part of the Patent Office Examiner, but in spite of these restrictions and well knowing that claim 38 was for an entirely different structure and of much broader scope than the concept which was first disclosed and or described and or claimed in the application as originally filed for said letters patent, and this claim not being supported by the original oath, or by a supplemental oath, or by any oath whatsoever, or by a search at the instance of the Patent Office, is therefore void, invalid and of no effect.

(13) That the aforesaid claims referred to in paragraphs 11 and 12 supra together with claims 24 to 31 of Reissue Patent No. 22,219, as well as the subject mat-
32 ter thereof, were inserted by amendment in their respective patent applications more than two years after the respective patent applications therefore were originally filed in the United States Patent Office and more than two years after the prior public use and sale of the aforesaid patented structures by the herein petitioner and respondent; that petitioner and respondent sold measuring wrenches described and claimed in the aforesaid letters patents more than two years prior to the time the aforesaid claims were inserted by amendment in the respective patent applications eventuating into letters patents numbered 2,279,792 and 2,283,888 and Re. 22,219 respectively; and that the aforesaid inventions were also in public use and sale more than two years prior to the insertion of the aforesaid claims by the Cedar Rapids Engineering Co., of Cedar Rapids, Iowa, the J. H. Williams Co. of Buffalo, New York, P. A. Sturtevant Company of Addison, Illinois, and others their names and dates now being unknown to petitioner but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(14) Petitioner further avers, on information and belief, that the said letters patent No. 2,279,792 is invalid and void for the reason that the said Kenneth R. Larson was not the original inventor, nor inventor at all, of the alleged invention or inventions the said letters patent purport to cover, but that said alleged invention and subject matter of said letters patent was acquired by Kenneth R. Larson from George Thomasma of 1121 Potter Road, Park Ridge, Illinois; and that the subject matter of said
33 letters patent No. 2,279,792 does not constitute the original sole invention of Kenneth R. Larson and not being in the name of the true inventor is, therefore, void, invalid, and of no force or effect.

(15) Petitioner, upon information and belief, further avers that letters patent No. 2,279,792 is invalid and of no force or effect, because the alleged invention of Kenneth R. Larson but, upon information and belief, the joint contribution of the said Kenneth R. Larson and George Thomasma, the latter contributing and furnishing at least a substantial portion of the disclosure or teachings of the subject matter therein described and claimed; and the aforesaid letters patent 2,279,792 not being in the name of the true inventors is, therefore, void, invalid and of no force or effect.

(16) Petitioner alleges that said Larson patent No. 2,279,792 is invalid and void and this suit may not be maintained, because said patentee has claimed to be the original and first inventor of a material and substantial part of the thing patented of which he was not the original and first inventor and that said patentee and his assignee, the respondent to whom the aforesaid letters patent issued, have unreasonably neglected or delayed to enter a disclaimer as to such parts of which the patentee was not the original and first inventor.

(17) Petitioner alleges that its wrench now being sold in large quantities, embodies a new principle of design and operation never theretofore incorporated into a similar instrument; that respondent has for many years without success sought to produce a satisfactory resist-
34 ance wrench and has produced a large number of different designs of resistance measuring wrenches upon which respondent has procured a large number of patents in an effort to prevent others from manufacturing a satisfactory resistance measuring wrench; that when

in September, 1941, petitioner publicly offered its new wrench, respondent's attorneys procured a specimen thereof and with this specimen before respondent's attorneys said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to purport to embrace petitioner's wrench, in violation of the Patent Act (Title 35, U. S. Code, Sec. 33; R. S. 4888), which claims respondent's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States letters patents Nos. 2,279,792 and 2,283,888, and subsequently respondent unlawfully procured Reissue letters patent No. 22,219, all for the sole purpose of procuring claims in said letters patents that might be sufficiently vague in terms to appear to cover the resistance measuring wrenches being sold by petitioner and to give color to respondent's notice of infringement against petitioner and its suit for alleged infringement against the Precision Instrument Manufacturing Co., Civil Docket No. 4392, whereas respondent and its attorneys well knew that said wrenches were not the invention of the applications for said letters patent, but involved an entirely different principle of construction and operation not even remotely contemplated by the alleged inventions comprising the subject matter of letters patents Re. 22,219 (and the original thereof 2,269,503), and 2,279,792 and 2,283,888; that respondent has, by these devices and the fraudulent concealment of material facts, mislead the Patent Office into believing that claims 31 and 32 of letters patent No. 2,279,792 and claim 38 of letters patent No. 2,283,888 included under Rule 78 after the patent applications had been allowed and thus not subject to further examination, covered no more or did not involve a departure or were not of broader scope than the claims already allowed; instead of the Patent Office Examiner being informed as to the full purpose and scope intended to be ascribed to these claims in relation to petitioner's wrench which was then on public sale and in public use and whereon a patent application was then pending in the United States Patent Office, respondent avoided all reference to its present interpretation and precluded the proper consideration thereof by the Patent Office Examiner through the stress of repeated personal interviews and through the extraordinary practice under Rule 78 calling for no

further search and the consideration of only routine amendments by and through the practice of only cursory consideration provided for under this rule; that the respondent procured the allowance of these new and broadened claims constituting an unwarranted enlargement upon the original disclosure by the use of vague words having an ambiguous and dual meaning in connection with the subject matter of respondent's patent applications and petitioner's new wrench which was then in public use and on public sale; that respondent has unwarrantedly and without legal right attempted to monopolize the manufacture and sale of résistance measuring wrenches, which move in interstate commerce, and has sought by these tactics to procure patents covering devices which were not the inventions of the applicants for the aforesaid letters patents into whose applications respondent has inserted claims pretending to cover the inventions of others; and that
36 by virtue of these acts the respondent has thus conducted itself with unclean hands and is not entitled to any relief.

(18) That said reissue patent No. 22,219 (and the original thereof 2,269,503) and each and all of the claims thereof are wholly void because the alleged invention described and claimed therein, long prior to the patentee's alleged invention thereof, and more than two years prior to the filing of the application for the aforesaid letters patent, was in public use and sale and previously patented and/or described in previous publications, to-wit in the following:

United States Patents.

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,195	Jan. 9, 1900	Culmer, et al.
832,064	Oct. 2, 1906	Keeler
1,048,488	Dec. 31, 1912	Blanchard, et al.
1,294,171	Feb. 11, 1919	Rockwell
1,512,192	Oct. 21, 1924	Benko
1,664,776	Apr. 3, 1928	Heise
1,685,916	Oct. 2, 1928	Hans, et al.
1,728,552	Sept. 17, 1929	Kennedy, et al.
1,809,087	June 9, 1931	Watrous

1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gumprich
1,848,488	Mar. 8, 1932	Linendoll
1,900,581	Mar. 7, 1933	Oliver
1,925,219	Sept. 5, 1933	Weigt
2,007,880	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et. al.
2,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,167,720	Aug. 1, 1939	Kress
2,171,872	Sept. 5, 1939	Zimmerman
2,183,633	Dec. 19, 1939	Zimmerman
2,190,966	Feb. 20, 1940	Zimmerman
2,206,315	July 2, 1940	Zimmerman
2,211,401	Aug. 13, 1940	Zimmerman
2,115,955	May 3, 1938	Johnson
2,260,358	Oct. 28, 1941	Zimmerman
2,231,240	Feb. 11, 1941	Zimmerman
2,260,258	Oct. 28, 1941	Zimmerman
2,279,792	Apr. 14, 1942	Larson
2,283,707	May 19, 1942	Sturtevant
2,283,888	May 19, 1942	Zimmerman

37

Foreign Patents.

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al.
British—423,477	1935	Salle

and others, the dates and patentees, authors and publishers of which the petitioner it now unable to supply but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(19) That said patent No. 2,279,792 and each and all of the claims thereof are wholly void because the alleged invention described and claimed therein, long prior to the patentee's alleged invention thereof, and more than two years prior to the filing of the application for the aforesaid letters patent, was in public use and sale and previously patented and/or described in previous publications, to-wit in the following:

United States Patents.

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,195	Jan. 9, 1900	Culmar, et al.
832,064	Oct. 2, 1906	Keeler
1,048,488	Dec. 31, 1912	Blanchard, et al.
1,294,171	Feb. 11, 1919	Rockwell
1,512,192	Oct. 21, 1924	Benko
1,685,916	Oct. 2, 1928	Hans, et al.
1,728,552	Sept. 17, 1929	Kennedy, et al.
1,809,087	June 9, 1931	Watrous
1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gumprich
1,848,488	Mar. 8, 1932	Linendoll
1,900,581	Mar. 7, 1933	Oliver
1,925,219	Sept. 5, 1933	Weigt
2,007,880	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et al.
2,115,955	May 3, 1938	Johnson
3,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,167,726	Aug. 1, 1939	Kress
2,171,872	Sept. 5, 1939	Zimmerman
2,183,633	Dec. 19, 1939	Zimmerman
2,190,966	Feb. 20, 1940	Zimmerman
2,206,315	July 2, 1940	Zimmerman
2,211,401	Aug. 13, 1940	Zimmerman
2,260,358	Oct. 28, 1941	Zimmerman
2,269,503	Jan. 13, 1942	Zimmerman
2,231,240	Feb. 11, 1941	Zimmerman
2,260,258	Oct. 28, 1941	Zimmerman
2,283,707	May 19, 1942	Sturtebant
2,283,888	May 19, 1942	Zimmerman

Foreign Patents.

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al.
British—423,477	1935	Salle

and others, the dates and patentees, authors and publishers of which the petitioner is now unable to supply but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(20) That said patent No. 2,283,888 and each and all of the claims thereof are wholly void because the alleged invention described and claimed therein, long prior to the patentee's alleged invention thereof, and more than two years prior to the filing of the application for the aforesaid letters patent, was in public use and sale and previously patented and or described in previous publications, to-wit in the following:

United States Patents:

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,195	Jan. 9, 1900	Culmer, et al.
832,064	Oct. 2, 1906	Keeler
1,048,488	Dec. 31, 1912	Blanchard, et al.
1,294,171	Feb. 11, 1919	Rockwell
1,512,492	Oct. 21, 1924	Benko
1,685,916	Oct. 2, 1928	Hans, et al.
1,728,552	Sept. 17, 1929	Kennedy, et al.
1,809,087	June 9, 1931	Watrous
1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gumprich
1,848,488	Mar. 8, 1932	Linendoll
1,900,581	Mar. 7, 1933	Oliver
1,925,219	Sept. 5, 1933	Weigt
2,007,689	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et al.
2,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,269,503	Jan. 13, 1942	Zimmerman
2,167,720	Aug. 1, 1939	Kress
2,171,672	Sept. 5, 1939	Zimmerman
2,183,633	Dec. 19, 1939	Zimmerman
2,190,966	Feb. 20, 1940	Zimmerman
2,206,815	July 2, 1940	Zimmerman

2,211,401	Aug.	13, 1940	Zimmerman
2,115,955	May	3, 1938	Johnson
2,260,358	Oct.	28, 1941	Zimmerman
2,231,240	Feb.	11, 1941	Zimmerman
2,269,258	Oct.	28, 1941	Zimmerman
2,279,792	Apr.	14, 1942	Larson
2,283,707	May	19, 1942	Sturtevant

Foreign Patents.

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al.
British—423,477	1935	Salle

and others, the dates and patentees, authors and publishers of which the petitioner is now unable to supply but prays leave to add by amendment to this petition or otherwise, when it has more fully ascertained the same.

(21) Petitioner is informed and believes and therefor avers that the claims of each of the letters patent in suit are wholly invalid and void as each of said claims is directed to an old and well-known association of elements, and to old and well-known practices; patentably exhausted long prior to the inventions or improvements alleged to be covered by said claims, and further that the claims of each of said patents in suit are wholly invalid and void as the same are for unpatentable aggregations as distinguished from patentable combinations.

(22) That said patent No. 2,279,792 and each and all of the claims thereof are wholly void in view of the state of the art at the time of the patentee's alleged invention was not patentable, but involved nothing more than the exercise of mechanical skill; that the essential and only differences between the device of the aforesaid patent and the prior art devices lies in the fact that the torque resisting flexible beam, mounting and movement of the patent construction differs from the prior art in mechanical detail only to acquire compactness; and that said differences constitute a mere variation of the devices of the prior art such as shown in United States letters patents Nos. 2,269,503 and 2,283,888 issued January 13, 1942 and May 19, 1942, respectively, to Herman W. Zimmerman's assignee, the respondent, on applications which were involved in interference with and were awarded priority of invention over the Larson patent application serially

numbered 232,723 which eventuated into the aforesaid Larson patent No. 2,279,792 issued to respondent as assignee.

(23) That said patent No. 2,283,888 and each and all of the claims thereof are wholly void in view of the state of the art at the time of the patentee's alleged invention was not patentable, but involved nothing more than the exercise of mechanical skill; that the essential and only differences between the device of the aforesaid patent and the prior art devices lies in the fact that the torque resisting flexible beam, mounting and movement of the patented construction differs from the prior art in mechanical detail only to acquire compactness; and that said differences constitute a mere variation of the devices of the prior art such as shown in United States letters patent No. 2,269,503.

(24) That claims 31 and 32 of letters patent No. 2,279,792 are substantially coextensive with claim 38 of letters patent No. 2,283,888; that by reason thereof respondent urges that said letters patents and particularly the aforesaid claims thereof are void for double patenting; that the claims of letters patent 2,283,888 are substantially coextensive with the claims of letters patent Re. 22,219
41 (and the original thereof No. 2,269,503) and by reason thereof, letters patent No. 2,283,888 is void for double patenting in view of the prior issue of letters patent No. 2,269,503.

(25) Petitioner further alleges, upon information and belief, that since the insertion of claims 31 and 32 in the aforesaid patent No. 2,279,792 and claim 38 in the aforesaid patent No. 2,283,888 and prior to respondent's filing of amendments under rule 78 including the aforesaid claims, in the respective patent applications, petitioner sold its present wrenches upon the market since September of the year 1941, and that by reason thereof respondent had knowledge of petitioner's commercial sale of the aforesaid wrenches; and that by reason of such priority, the respondent is precluded and estopped from asserting any claim whatsoever against the petitioner under claims 31 and 32 of letters patent 2,279,792 and claim 38 of letters patent 2,283,888 which in truth and in fact are for an invention entirely different from that theretofore disclosed and claimed in the applications eventuating into the aforesaid letters patents.

(26) That claims 31 and 32 of the aforesaid letters

patent No. 2,279,792 and claim 38 of the aforesaid letters patent No. 2,283,888, were inserted by amendment under rule 78 and constitute new matter submitted after the close of the prosecution of the aforesaid patent applications; and that said new matter is not part of the original disclosure, description or claims as originally filed; and that said claims 31 and 32 and claim 38 of the respective aforesaid letters patents attempt to cover an improvement not contemplated by subject matter of the applications eventuating into United States letters patent Nos. 2,279,792 and 2,283,888 as originally filed; that in truth and in fact, claims 31-32 and claim 38 attempt to define a new development commercially sold on the market
42 by petitioner long prior to the insertion of these claims by amendment under rule 78 as a part of the applications eventuating into United States letters patent Nos. 2,279,792 and 2,283,888; and by reason of these facts, the prior commercial exploitation of the aforesaid wrenches upon the market by the petitioner constitutes an estoppel upon the respondent to assert any rights under these claims, and petitioner possesses intervening rights which are superior thereto unless said claims are given a construction limited to a flexible torque resisting beam.

(27) That the application which eventuated into the aforesaid letters patent No. 2,279,792 was on to-wit. September 28, 1938 pledged to petitioner as security for the performance of a certain understanding between it and the applicant named in the aforesaid letters patent No. 2,279,792; that said application for letters patent was pledged to petitioner in accordance with the terms of a written preliminary agreement dated September 28, 1938, (a copy of said agreement between Kenneth R. Larson and petitioner being attached hereto and marked Exhibit 5); that the aforesaid preliminary agreement never was reduced to a formal agreement as originally contemplated under the terms thereof; that the agreement dated December 20, 1939 between petitioner and respondent was predicated upon petitioner's limited title to the aforesaid application serial number 232,723 involved in the last named agreement between petitioner and Kenneth R. Larson dated September 28, 1938 (Exhibit 5) per recitation thereof in the second paragraph on page two of the Exhibit 4 agreement; that under the exhibit 4 agree-

ment, the petitioner released to Kenneth R. Larson and the Precision Instrument Mfg. Co., the pledge of application serially numbered 232,723; which eventuated into the aforesaid letters patent No. 2,279,792; and that
43 by reason of being a mere pledgee of application serially numbered 232,723, petitioner nevertheless deems itself entitled to contest the validity of the aforesaid letters patent No. 2,279,792.

(28) That petitioner has complied with all the terms set forth in the aforesaid Exhibit 4 contract and performed fully thereunder to the end that the terms thereof have been fully executed by the petitioner; that petitioner has not violated the aforesaid patents nor breached the terms of the aforesaid contract by reason of the fact that its present measuring wrenches are entirely new in principle, function, and construction to the end that such constitutes an important advance in the art of nut turning load measuring wrenches; that said improvement embodied in petitioner's wrenches is not contemplated or covered by any or all of the aforesaid letters patents or contract or both, and the respondent well knowing these premises has unwarrantedly threatened petitioner and its customers to the irreparable wrong, injury and damage of petitioner.

(29) Petitioner further alleges that claims 31 and 32 of the aforesaid Larson patent No. 2,279,792 and claim 38 of the aforesaid Zimmerman patent No. 2,283,888 are void in failing to "particularly point out and distinctly claim the part, improvement or combination" which the respective applicants therefor claimed as their respective inventions as required by R. S. Section 4888, and said claims are broader than the alleged invention.

(30) Petitioner alleges that the application eventuating into Letters Patent No. 2,279,792 was declared by the United States Patent Office to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,563; that said interference was identified in the United States Patent Office as No. 77,565 and was a proceeding in which the question to be determined was
44 whether or not the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; that pursuant thereto, in October, 1940, testimony of Larson and several witnesses in behalf of Larson was taken under oath at Chicago,

Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois; that Kenneth R. Larson, one of the witnesses, did then and there falsely testify on his own behalf under oath that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934, and that he had produced several models which he identified, and a drawing which he testified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938; that the issues to which said testimony was so directed were critical issues in the interference and the testimony was material to said issues; that said testimony constituted perjury under the statutes of the United States (Title 18 U. S. Code, Section 231) and of the State of Illinois (Chapter 38, Ill. Rev. Stat., Section 473); that respondent and its agents were aware that said testimony and evidence were false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and the Precision Instrument Manufacturing Co. transferred to respondent the Larson patent application and the sum of Five Hundred ($500.00) Dollars and executed the agreement identified herein as Exhibit 6 and in consideration thereof respondent promised to withhold its information and complaint and, further, would suppress the evidence of said perjury; that the said Larson patent application and certain rights thereunder were at that time held by petitioner under an agreement attached hereto and identified as Exhibit 5; that in order to procure Larson's release under the Exhibit 5 agreement from petitioner, respondent also threatened petitioner and its attorney who was then acting as attorney for Larson in the aforesaid interference, with the crime of possessing and concealing knowledge of the commission of said perjury by Larson and others in his behalf (Title 18 U. S. Code, Section 250, 251) and with action for alleged civil and criminal conspiracy to defraud and damage respondent by unwarrantedly delaying the issuance of its patents with perjured testimony and evidence fostered or intended to be fostered upon the Patent Office; that notwithstanding the fact that petitioner and its attorney had no knowledge that the said testimony and evidence by and on behalf of Larson was not the whole truth until so informed

by respondent's attorneys, the latter nevertheless continued its threats of prosecution against petitioner, its attorney, Larson and others; that said threats were repeated to a point that petitioner was coerced to cooperate with Larson and Precision Instrument Mfg. Co. and to subscribe to the respondent's terms that were simultaneously tendered in the form of the Exhibit 4 and 6 contracts; that said contracts were subscribed to by petitioner and Larson together with the Precision Instrument Manufacturing Co., in consideration of respondent's promise to suppress all causes of action against petitioner and the crime of perjury against Larson; that petitioner, Larson and the Precision Instrument Mfg. Co. being under duress, coersion, and persistent threats of respondent and its attorneys, reluctantly and without any freedom of action complied with the terms and conditions under which said crime of perjury would be suppressed; whereupon in violation of the law (Title 18 U. S. Code, Section 250, 251; Chapter 38 Ill. Rev. Stat., Section 135), respondent did procure the transfer to it of the Larson application and the sum of Five Hundred ($500.00) Dollars and the other covenants contained in exhibits 4 and 6 notwithstanding that the interference involved only a part of the subject matter of said Larson patent application and none of the restrictions imposed in said agreements Exhibits 4 and 6; and through duress, coercion and the force of threats respondent did procure the execution by petitioner, Precision Instrument Mfg. Co. and Larson of the agreements Exhibits 4 and 6, and did thus compel the cancellation between petitioner and Larson of the agreement Exhibit 5 contrary and in violation of the terms thereof; respondent did thereafter suppress the evidence of said perjury and withheld making its information and complaint to the proper officers, and did thereby compound a crime in violation of the statutes hereinabove referred to; that the contracts comprising petitioner's Exhibit 4 and intervenor's Exhibit 6 were one and the same transaction evidenced by separate documents prepared and presented at the same time by respondent's attorneys and executed severally by the petitioner and intervenor at the special insistence and request of respondent; wherefore said agreements, Exhibits 4 and 6, and the transactions of which they are a part, are jointly and severally unlawful, null and void.

31. Petitioner further alleges that when respondent filed its application for Reissue Letters Patent No. 22,219, petitioner had long been selling wrenches of the type accused in this suit, as respondent well knew, which did not infringe any claim of the Letters Patent 2,269,503; that was subsequently reissued as Reissue No. 22,219,
47 whereby petitioner acquired intervening rights with respect to said Reissue Letters Patent and cannot be held to infringe the claims thereof.

32. Petitioner further alleges that Reissue Letters Patent No. 22,219 was not legally issued in that there existed no statutory grounds for the surrender and the reissue of Letters Patent No. 2,269,503; that the claims of Reissue Patent No. 22,219 are an undue enlargement upon the claims originally presented in letters patent 2,269,503; and that the claims of said reissue patent seeking to cover any type of measuring wrench embodying a shock-absorbing flexible element that is normally unflexed, was not the invention of the patentee Zimmerman named therein, but was a mechanical detail suggested by George M. Walraven employed by petitioner in its engineering department, with whom the patentee Zimmerman had frequent contact; therefore, said reissue is void for each or all of the aforesaid reasons.

33. Petitioner further alleges that while it signed the document attached hereto as Exhibit 4 on to wit, December 20, 1940, not one of the three patents involved herein had issued; that the subject matter of said alleged agreement was not in existence or certain at the time of its execution, wherefore there was no contract of the scope and effect asserted by respondent; and that said agreement did not contemplate or embrace Reissue Letters Patent No. 22,219 or any other subject matter that constituted an enlargement upon the claims or the scope of the disclosure then contained in the applications for letters patents upon which the Exhibit 4 agreement was predicated.

34. Petitioner further alleges that by the agreements, petitioner's Exhibits 4 and 6, respondent licensed petitioner to sell six thousand (6000) wrenches of the type then being made and sold by said defendant in interstate
commerce, which wrench was then not covered by any
48 issued patent, and thereafter forbade petitioner from selling such wrenches, which are articles moving in

interstate commerce; wherefore said agreement is in restraint of trade under the Sherman Anti-trust Act of the United States (Act of July 2, 1890, C. 647, 26 Stat. 209), and is illegal, as respondent did not, at the time of the execution of said agreement, and does not now, have any valid United States Letters Patent which would support a restraint in interstate commerce. The Letters Patents upon which respondent has notified petitioner of infringement and otherwise has created a controversy thereon, are invalid and void on the grounds that:

(a) The alleged inventions claimed therein do not constitute invention but merely changes common to those skilled in the art of wrench manufacture.

(b) The claims relied upon by respondent herein are vague, indefinite, and ambiguous, and do not particularly point out and distinctly claim the part, improvement, or combination in which the respective applicant for each patent claims as his invention or discovery, as required by R. S. 4888.

(c) The alleged inventions claimed in each of the patents in suit do not constitute invention over the disclosures of the patents set forth in Paragraph 18 hereof.

(d) The alleged inventions claimed in each of the patents in suit were not patentable because they were patented or described, prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, in the patents enumerated in Paragraph 18 hereof, and, prior to the alleged invention thereby by patentees Zimmerman and Larson, were invented by the patentees of the patents enumerated in said Paragraph 18, who reside at the respective residences named in their respective patents; and said alleged inventions were prior to the alleged invention thereof, or more than two years before the filing of the respective applications therefor, 49 by, known to, and publicly used and sold by Allen F. Dunn of Cedar Rapids, Iowa, Cedar Rapids Engineering Company of Cedar Rapids Iowa, and Automotive Maintenance Machinery Company of North Chicago, Illinois.

(e) The alleged inventions claimed in Claim 38 of Letters Patent No. 2,283,888 were not the inventions of Herman W. Zimmerman, who surreptitiously or unjustly obtained a patent therefor, but were in fact invented by Kenneth R. Larson of Des Plaines, Illinois, who was using reasonable diligence in adapting and perfecting the same.

Wherefore, being without an adequate remedy at law, your petitioner prays:

(a) that a writ under the seal of this Court be issued, directed to respondent, requiring it to appear and make answer to this petition or complaint, and to perform and abide by such further orders and decrees as this Court may make; and

(b) that a declaratory decree be entered herein, adjudging said respondent's reissue patent No. 22,219 (and the original thereof 2,269,503) and Nos. 2,279,792 and 2,283,888 and each and all of the claims thereof, to be invalid, and also that none of the said claims in all of the aforesaid letters patents is infringed by said measuring wrenches sold by petitioner.

(c) that respondent be enjoined, both temporarily and permanently, from suing or sending any threats of suit or infringement notices to customers or prospective customers of petitioner, charging that its said measuring wrenches infringe either or any of the claims of said patents Nos. Re. 22,219 (and the original thereof 2,269,503), 2,279,792, and 2,283,888 and from making any false or unfounded statements respecting the alleged infringement of said patents by petitioner or any statement or statements to the effect that the petitioner has been ordered to cease to sell said devices or that petitioner has violated the aforesaid contract dated December 29, 1941.

(d) that respondent be decreed not to be the owner of Larson patent No. 2,279,792; that the contracts appended hereto as Exhibits No. 4 and 6 be declared null and void; that the re-assignment of title in and to the patent application which eventuated into the aforesaid letters patent No. 2,279,792 from petitioner to Precision Instrument Mfg. Co. and Kenneth R. Larson and the assignment of said title from the latter to respondent in accordance with the terms of the contracts appended hereto as Exhibits Nos. 4 and 6, be declared null and void; that respondent be ordered to execute a quit claim deed of assignment to petitioner for any interest respondent might claim to have in the aforesaid letters patent No. 2,279,792; and that petitioner be decreed to be the owner of the aforesaid Larson patent No. 2,279,792 under the terms of the contract appended hereto as Exhibit No. 5.

(e) that respondent be enjoined from instituting suits under Larson patent No. 2,279,792 and Zimmerman patents

No. Re. 22,219 (and the original thereof 2,269,503) and 2,283,888, because of the unclean hands of respondent in procuring said patents and enlarging upon the content thereof in violation of the statutes and by methods condemned in equitable proceedings.

(f) that respondent be decreed to pay the costs of this proceeding, including a reasonable attorney's fee to petitioner; and

51 (g) that petitioner may have such further and other relief in the premises as to this Court may seem meet.

Snap-On Tools Corporation,
By Harry C. Alberts,
Harry C. Alberts,
Its Attorney,
38 S. Dearborn St.
Chicago, Illinois.

State of Illinois }
County of Cook } ss:

Harry C. Alberts, being first duly sworn, deposes and says that he is the attorney of Snap-on Tools Corporation, the petitioner named in the foregoing petition; that he has prepared the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters herein stated to be alleged on information and belief, and as to those matters he believes them to be true.

Harry C. Alberts,
Harry C. Alberts.

Subscribed and sworn to before me this 26th day of February, 1943.

(Seal)

Erma Fine,
Notary Public.

(Exhibits 1, 2, 3, 4, 5 and 6 attached not copied.)

52 And afterwards on, to wit, the 10th day of March, 1943, came the Respondent in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Answer to Third Amended Petition for Declaratory Decree in words and figures following, to wit:

53 IN THE UNITED STATES DISTRICT COURT.

(Caption—4451)

ANSWER TO THIRD AMENDED PETITION FOR DECLARATORY DECREE.

For Answer to the Third Amended Petition of the petitioner, Snap-On Tools Corporation, in the above-entitled cause, respondent, Automotive Maintenance Machinery Co., says:

1. Respondent admits the allegations contained in paragraph (1) of the Third Amended Petition.

2. Respondent admits the allegations contained in paragraph (2) of the Third Amended Petition.

54 3. Answering paragraph (3) of the Third Amended Petition, respondent admits that it is engaged in making and selling wrenches, known as torque measuring wrenches, for measuring the extent to which nuts or other fasteners are turned to retain parts together with any desired or predetermined degree of tightness, and that petitioner is engaged in the sale of wrenches of the kind stated, but that respondent is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph, and, therefore, leaves the petitioner to its proof thereof.

4. Answering paragraph (4) of the Third Amended Petition, respondent admits that an actual controversy exists between petitioner and respondent; that respondent is, and is asserting itself to be, the owner of United States Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, issued November 3, 1942, April 14, 1942 and May 19, 1942, respectively; that on July 22, 1942 respondent instituted suit against Precision Instrument Manufacturing Company, petitioner's supplier of the alleged infringing measuring wrenches with respect to Letters Patent No. 2,269,503; that said Letters Patent No. 2,269,503 was surrendered to the Commissioner of Patents and on November 3, 1942 was reissued as Letters Patent No. 22,219; that on April 18, 1942, with respect to Letters Patent No. 2,279,792, on July 3, 1942 with respect to Letters Patent No. 2,282,888, on July 31, 1942 with respect to Letters Patent No. 2,269,503, and on November 4, 1942 with respect to Letters Patent No. Re. 22,219,

in writing charged petitioner with infringement of said
55 Letters Patent, respectively, and violation of an agreement entered into between respondent and petitioner on December 20, 1940 (a copy of which agreement is attached to petitioner's Third Amended Petition as Exhibit 4); and that respondent has represented to petitioner, and still so represents, that it has been and still is infringing respondent's said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and violating said agreement of December 20, 1940.

Further answering paragraph (4) of the Third Amended Petition, respondent avers that on June 15, 1942, prior to the filing of petitioner's original petition herein, it filed in this Court, under Civil Action No. 4382, a complaint against Precision Instrument Manufacturing Company of Des Plaines, Illinois, intervenor herein, and others, charging, inter alia, infringement of respondent's Letters Patent Nos. 2,279,792 and 2,283,888 and praying for injunctive relief and for an accounting of profits and damages, etc.; that on July 22, 1942, in said Civil Action No. 4382, respondent filed an amended complaint charging said defendants therein with infringement of respondent's Letters Patent No. 2,269,503 in addition to infringement of said Letters Patent Nos. 2,279,792 and 2,283,888, and praying additional relief for infringement thereof; that on November 30, 1942, in said Civil Action No. 4382, respondent filed an amended and supplemental complaint charging defendants therein with infringement of respondent's Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503) in addition to infringement of said Letters Patent Nos. 2,279,792 and 2,283,888, and praying addi-
56 tional relief for infringement thereof; and, therefore, respondent admits that Precision Instrument Manufacturing Company has been charged to infringe and has actually been sued under respondent's Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, but denies each and every other allegation contained in said paragraph and not hereinabove expressly admitted.

5. Answering paragraph (5) of the Third Amended Petition, respondent admits that no suit has been instituted by the respondent against petitioner charging infringement of said Letters Patent Nos. Re. 22,219 (and the original

thereof No. 2,269,503), 2,279,792 and 2,283,888 but denies each and every other allegation contained in said paragraph.

6. Answering paragraph (6) of the Third Amended Petition, respondent admits that the jurisdiction of this Court is based upon the fact that the actual controversy existing between petitioner and respondent arises under the patent laws of the United States, and is a question of whether or not the aforesaid wrenches sold or offered for sale by petitioner infringe respondent's said patents Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, but denies that there is a question whether said patents are good and valid at law, and specifically denies that petitioner has the right to question or contest in any manner the validity of any of the claims of any of said Letters Patent.

57 7. Answering paragraph (7) of the Third Amended Petition, respondent admits that the jurisdiction of this Court as to the controversy existing between petitioner and respondent precipitated by respondent's written notice of petitioner's alleged violation of an existing agreement dated December 20, 1940, and predicated in part upon a patent application which matured into the aforesaid Letters Patent No. 2,279,792 is based upon diversity of citizenship of the respective parties and the amount involved exclusive of interest and costs, being in excess of Three Thousand Dollars ($3000.00).

Further answering paragraph (7) of the Third Amended Petition, respondent affirmatively avers that said agreement dated December 20, 1940, is also predicated in part upon patent applications which eventuated in Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503) and 2,283,888, included in petitioner's Third Amended Petition filed herein.

Further answering paragraph (7) of the Third Amended Petition, respondent denies each and every allegation contained in said paragraph and not hereinabove expressly admitted, and specifically denies that said agreement of December 20, 1940, is based solely on the patent application eventuating into said Letters Patent Nos. 2,279,792, denies that respondent has made any baseless assertions or will make any baseless assertions pending the litigation, denies that said patents are invalid, denies that said patents are not infringed by petitioner, denies that said contract of December 20, 1940 has not been violated, and

further specifically denies that petitioner has the right to question or contest the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

58 8. Respondent denies each and every allegation contained in paragraph (8) of the Third Amended Petition, except respondent admits that said agreement prescribes that petitioner would not after a specified time sell wrenches embodying the inventions set forth in the aforesaid Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888.

9. Respondent denies each and every allegation contained in paragraph (9) of the Third Amended Petition, except respondent admits that the United States Patent Office did not declare an interference between said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888 and any application owned by petitioner and purporting to illustrate and claim the accused wrench in suit.

10. Respondent denies each and every allegation contained in paragraph (10) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

11. Answering paragraph (11) of the Third Amended Petition, respondent admits that the claims constituting claims 31 and 32 of said Larson patent No. 2,279,792 were presented by it, through its attorneys, in the application eventuating in said patent No. 2,279,792 by an amend-

59 ment under Rule 78 of the United States Patent Office, and admits that no supplemental oath was filed in support of said claims 31 and 32; but respondent denies that a supplemental oath was required or necessary for support of said claims 31 and 32 and further denies each and every other allegation contained in said paragraph, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

12. Answering paragraph (12) of the Third Amended Petition, respondent admits that the claim constituting claim 38 of said Zimmerman patent No. 2,283,888 was presented by it, through its attorneys, in the application

eventuating in said patent No. 2,283,888 by an amendment under Rule 78 of the United States Patent Office, and admits that no supplemental oath was filed in support of said claim 38; but respondent denies that a supplemental oath was required or necessary for support of said claim 38 and further denies each and every other allegation contained in said paragraph, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,283,888.

13. Answering paragraph (13) of the Third Amended Petition, respondent admits that claims 31 and 32 of Letters Patent No. 2,279,792 and claim 38 of Letters Patent No. 2,283,888 were inserted by amendment in their respective patent applications more than two years after the respective patent applications therefor were filed in the United States Patent Office and further admits that claims 24 to 31 of Letters Patent No. 22,219 were inserted in the application for reissue more than two years after the original application was filed; but respondent denies each and every other allegation contained in paragraph (13) and further specifically denies that petitioner has the right to question or contest in any way the validity of said patents Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

14. Respondent denies each and every allegation contained in paragraph (14) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

15. Respondent denies each and every allegation contained in paragraph (15) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

16. Respondent denies each and every allegation contained in paragraph (16) of the Third Amended Petition, and specifically denies that respondent's Letters Patent No. 2,279,792 is invalid and void by reason of the fact that the patentee Larson and his assignee, the respondent, have failed to enter a disclaimer of the thing patented, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,279,792.

17. Answering paragraph (17) of the Third Amended

Petition, respondent admits that it has produced a number of different designs of resistance measuring wrenches and has procured patents covering the same; admits that its attorneys inserted certain claims under Rule 78 of the United States Patent Office in the applications which terminated in the patents Nos. 2,279,792 and 2,283,888 in suit; but denies each and every other allegation contained in said paragraph (17) and specifically denies that petitioner has the right to question the validity of said Letters Patent No. Re. 22,219, 2,279,792 and 2,283,888 on the grounds that said Letters Patent were obtained through and by means of fraudulent concealment of material facts or by misleading the Patent Office in respect to claims allowed therein; further specifically denies that the matters alleged in said paragraph (17) constitute unclean hands; and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, of any of them.

18. Respondent denies each and every allegation contained in paragraphs (18), (19) and (20) of the Third Amended Petition; and respondent further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

19. Respondent denies each and every allegation of paragraph (21) of the Third Amended Petition, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patents Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, or any of them.

20. Answering paragraph (22) of the Third Amended Petition, respondent admits that the applications eventuating into said Zimmerman Letters Patent Nos. 2,269,503 (and the reissue thereof No. Re. 22,219) and 2,283,888 and the application eventuating into said Larson Letters Patent No. 2,279,792 were involved in an interference and that priority of invention was awarded to Herman W. Zimmerman, but denies each and every other allegation contained in paragraph (22) of the Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent No. 2,279,792.

21. Respondent denies each and every allegation con-

tained in paragraph (23) of the Third Amended Petition, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patent No. 2,283,888.

63 23. Respondent denies each and every allegation contained in paragraph (24) of the Third Amended Petition, and specifically denies that petitioner has the right to question or contest in any manner the validity of said patents Nos. 2,279,792 and 2,283,888, or either of them.

23. Answering paragraph (25) of the Third Amended Petition, respondent admits that petitioner has sold its present wrenches upon the market since the insertion of claims 31 and 32 in said patent No. 2,279,792 and claim 38 in said patent No. 2,283,888; but respondent is without knowledge and information sufficient to form a belief as to the truth of the allegations that prior to respondent's filing of amendments under Rule 78 including the aforesaid claims, in the respective patent application, petitioner sold its present wrenches upon the market since September 1941 and, therefore, denies said allegations and leaves petitioner to its proof thereof.

Further answering paragraph (25) of the Third Amended Petition, respondent denies that it had knowledge of petitioner's commercial sale of the aforesaid wrenches as of September 1941, and denies that respondent had knowledge of the structure of the aforesaid wrenches as of September 1941; and to the contrary avers that, although respondent, through its attorneys, pursuant to an understanding between petitioner and respondent and their respective attorneys, endeavored to obtain from petitioner, through its attorney, knowledge of the construction and operation of torque measuring wrenches that petitioner was commercially advertising and selling during the

64 latter half of the year 1941, petitioner and its attorney intentionally and wilfully refused to give such information to respondent or its attorneys; and denies that respondent is by reason of such alleged priority precluded and estopped from asserting any claim whatsoever against the petitioner under claims 31 and 32 of Letters Patent No. 2,279,792 and claim 38 of Letters Patent No. 2,283,888. Respondent further specifically denies that Letters Patent Nos. 2,279,792 and 2,283,888 are in truth and in fact for an invention entirely different from that theretofore disclosed and claimed in the applications eventuating into the aforesaid Letters Patent. Respondent further specifically

denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. 2,279,792 and 2,283,888, or either of them.

Respondent further denies that petitioner has the right to question respondent's rights in and with respect to Letters Patent Nos. 2,279,792 and 2,283,888 on the ground that respondent is precluded and estopped from asserting any claim whatsoever against the petitioner under claims 31 and 32 of patent No. 2,279,792 and claim 38 of patent No. 2,283,888, and further denies that the allegations contained in said paragraph (25) constitute grounds for so precluding and estopping respondent as aforesaid.

24. Answering paragraph (26) of the Third Amended Petition, respondent admits that claims 31 and 32 of Letters Patent No. 2,279,792 and claim 38 of Letters Patent No. 2,283,888 were inserted by amendment under Rule 78; but specifically denies each and every other allegation
64 contained in paragraph (26) of said Third Amended Petition, and further specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent Nos. 2,279,792 and 2,283,888, or either of them.

Respondent further denies that petitioner has the right to raise the questions of estoppel and intervening rights because it is estopped to do so, and respondent further denies that the allegations contained in said paragraph (26) constitute estoppel and intervening rights in favor of petitioner.

25. Answering paragraph (27) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations that the application which eventuated into Letters Patent No. 2,279,792 was on to-wit September 28, 1938, pledged to petitioner as security for the performance of a certain understanding between it and the applicant named in aforesaid Letters Patent No. 2,279,792; that said application for Letters Patent was pledged to petitioner in accordance with the terms of a preliminary written agreement dated September 28, 1938 (Third Amended Petition Exhibit 5); that the aforesaid preliminary agreement never was pledged to a formal agreement as originally contemplated under the terms thereof, and, therefore, denies the same and leaves petitioner to its proof thereof.

Further answering paragraph (27) of the Third Amended Petition, respondent denies that the agreement

dated December 20, 1940 (Third Amended Petition
66 Exhibit 4) between petitioner and respondent was predicated upon petitioner's alleged limited title to the aforesaid application Serial No. 232,723, involved in said agreement of September 28, 1938 (Third Amended Petition Exhibit 5) between petitioner and said Kenneth R. Larson, and denies that there is any recitation to that effect in the second paragraph on page 2 of said contract of December 20, 1940 (Third Amended Petition Exhibit 4).

Further answering paragraph (27) of the Third Amended Petition, respondent admits that under said agreement of December 20, 1940 (Third Amended Petition Exhibit 4), petitioner agreed to and did reassign to said Kenneth R. Larson and Precision Instrument Manufacturing Company its entire right, title and interest in and to said Larson application Serial No. 232,723 (eventuating into said Larson patent No. 2,279,792), as more particularly set forth in the paragraph numbered 1 on page 2 of said agreement.

Further answering paragraph (27) of the Third Amended Petition, respondent denies each and every of the allegations contained in said paragraph which is not hereinbefore specifically denied or admitted; specifically denies that petitioner ever was a mere pledgee of said application Serial No. 232,723, and further specifically denies that by virtue of said agreement of September 28, 1938 (Third Amended Petition Exhibit 5) and/or said agreement of December 20, 1940 (Third Amended Petition Exhibit 4), petitioner has the right or is entitled to question or contest in an manner the validity of said Larson patent No. 2,279,792.

67 26. Respondent denies each and every allegation contained in paragraph (28) of the Third Amended Petition.

27. Respondent denies each and every allegation of paragraph (29) of the Third Amended Petition and specifically denies that petitioner has the right to question or contest in any manner the validity of said patents Nos. 2,279,792 and 2,283,888, or either of them, or any of the claims thereof.

28. Answering paragraph (30) of the Third Amended Petition, respondent admits that the application which became the Larson patent No. 2,279,792 in suit was declared by the United States Patent Office to be in interference with the applications which became the Zimmerman patents

No. 2,283,888 and 2,269,503 (and its reissue No. 22,219) in suit; that said interference was identified in the United States Patent Office as No. 77,565 and was a proceeding in which the question to be determined was whether or not the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; that pursuant thereto, in October and November, 1940, testimony of Larson and several witnesses on behalf of Larson was taken under oath at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois; that the contracts (Pet. Exhs. 4 and 6) are separate documents prepared and presented at the same time by respondent's attorneys and executed severally by the petitioner, intervenor and Kenneth R. Larson, at the request of respondent; and that said Interference No. 77,565 involved only a part of the subject matter of said Larson application.

Further answering paragraph (30) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations that Kenneth R. Larson, one of the witnesses testifying on behalf of Larson in said Interference No. 77,565, did then and there falsely testify on his own behalf under oath that he had invented and made a wrench embodying the subject matter of the counts in interference in the year 1934, and that he had produced several models which he identified, and a drawing which he testified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938, that the issues to which said testimony was so directed were critical issues in the interference and that the testimony was material to said issues, that said testimony constituted perjury under the statutes of the United States (Title 18 U. S. Code, Section 231) and of the State of Illinois (Chapter 38, Ill. Rev. Stat., Section 473), and respondent, therefore, leaves petitioner to its proof thereof.

Further answering paragraph (30) of the Third Amended Petition, respondent denies the allegations that

(a) "respondent and its agents were aware that said testimony and evidence were false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and the Precision Instrument Manufacturing Co. transferred to respondent the Larson patent application and the sum

of Five Hundred ($500.00) Dollars and executed the agreement identified herein as Exhibit 6 and in consideration thereof respondent promised to withhold its information and complaint and, further, would suppress the evidence of said perjury";

69½ (b) "in order to procure Larson's release under the Exhibit 5 agreement from petitioner, respondent also threatened petitioner and its attorney who was then acting as attorney for Larson in the aforesaid interference, with the crime of possessing and concealing knowledge of the commission of said perjury by Larson and others in his behalf (Title 18 U. S. Code, Section 250, 251) and with action for alleged civil and criminal conspiracy to defraud and damage respondent by unwarrantedly delaying the issuance of its patents with perjured testimony and evidence fostered or intended to be fostered upon the Patent Office";

(c) "notwithstanding the fact that petitioner and its attorney had no knowledge that the said testimony and evidence by and on behalf of Larson was not the whole truth until so informed by respondent's attorneys, the latter nevertheless continued its threats of prosecution against petitioner, its attorney, Larson and others; that said threats were repeated to a point that petitioner was coerced to cooperate with Larson and Precision Instrument Mfg. Co. and to subscribe to the respondent's terms that were simultaneously tendered in the form of the Exhibits 4 and 6 contracts";

(d) "said contracts were subscribed to by petitioner and Larson, together with the Precision Instrument Manufacturing Co. in consideration of respondent's promise to suppress all causes of action against petitioner and the

69½ crime of perjury against Larson; that petitioner, Larson and the Precision Instrument Mfg. Co. being under duress, coercion, and persistent threats of respondent and its attorneys, reluctantly and without any freedom of action complied with the terms and conditions under which said crime of perjury would be suppressed; whereupon in violation of the law (Title 18 U. S. Code, Section 250, 251; Chapter 38 Ill. Rev. Stat., Section 135), respondent did procure the transfer to it of the Larson application and the sum of Five Hundred ($500.00) Dollars and the other covenants contained in Exhibits 4 and 6";

(e) "through duress, coercion and the force of threats respondent did procure the execution by petitioner, Preci-

sion Instrument Mfg. Co., and Larson of the agreements Exhibits 4 and 6, and did thus compel the cancellation between petitioner and Larson of the agreement Exhibit 5 contrary and in violation of the terms thereof";

(f) "respondent did thereafter suppress the evidence of said perjury and withheld making its information and complaint to the proper officers and did thereby compound a crime in violation of the statutes hereinabove referred to";

(g) "the contracts comprising petitioner's Exhibit 4 and intervenor's Exhibit 6 were one and the same transaction" and that said contracts were executed "at the special insistance and request of respondent"; and

70 (h) "said agreements, Exhibits 4 and 6, and the transactions of which they are a part, are jointly and severally unlawful, null and void."

Further answering paragraph (30) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that the said Larson application and certain rights thereunder were at the time alleged by petitioner in said paragraph (30) held by petitioner under an agreement attached to said petition and identified as Exhibit 5, and, therefore, leaves petitioner to its proof thereof.

Further answering paragraph (30) of the Third Amended Petition, respondent denies each and every other allegation of said paragraph which is not hereinabove expressly admitted or denied.

29. Answering paragraph (31) of the Third Amended Petition, respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that when respondent filed its application for Reissue Letters Patent No. 22,219, petitioner had long been selling wrenches of the type accused in this suit, and, therefore, leaves petitioner to its proof thereof.

Further answering paragraph (31) of the Third Amended Petition, respondent denies each and every other allegation of said paragraph (31) and specifically denies that petitioner acquired intervening rights with respect to said Letters Patent, denies that petitioner has the right to raise the question of intervening rights, and denies that the allegations contained in said paragraph (31) establish intervening rights.

71 30. Answering paragraph (32) of the Third

Amended Petition, respondent denies each and every allegation contained in said paragraph and specifically denies that petitioner has the right to question or contest in any manner the validity of said Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503).

31. Answering paragraph (33) of the Third Amended Petition, respondent admits that on December 20, 1940, the time respondent and petitioner entered into the contract (Pet. Ex. 4), none of the three patents Nos. 2,279,792, 2,283,888 and Re. 22,219 [or the original thereof No. 2,269,503] had issued, but respondent denies each and every other allegation contained in said paragraph (33).

32. Answering paragraph (34) of the Third Amended Petition, respondent admits that by the agreement (Pet. Exh. 4) it licensed petitioner to sell six thousand (6,000) wrenches of the type then being made and sold by petitioner in interstate commerce, which wrench was then not covered by any issued patent, but which wrench embodied the inventions disclosed and claimed in the applications involved in said Interference No. 77,565 and which became the Larson and Zimmerman torque wrench patents in suit, said wrench being covered by numerous claims then allowed in said Larson and Zimmerman applications; that by said contract (Pet. Exh. 4) petitioner covenanted, after the selling of said six thousand (6,000) wrenches, to not thereafter sell wrenches of said type, and petitioner having violated said agreement not to sell wrenches of said type, respondent has notified petitioner of infringement of the Letters Patent in suit which were issued upon said Larson and Zimmerman applications aforesaid.

72 Further answering paragraph (34) of the Third Amended Petition, respondent specifically denies that said contracts (Pet. Exhs. 4 and 6) are in restraint of trade under the Sherman Antitrust Act, that they are illegal and that they are null and void; further specifically denies that petitioner has the right to question the legality of said contracts under the Sherman Antitrust Act; and further specifically denies that the allegations contained in said paragraph (34) establish illegality of said contracts in violation of the Sherman Antitrust Act.

Further answering paragraph (34) of the Third Amended Petition, respondent denies each and every allegation contained therein not hereinabove expressly admitted or denied and specifically denies that petitioner

has the right to question or contest in any manner, including the grounds alleged in subparagraphs (a) to (e), inclusive, of said paragraph (31), the validity of said Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219 (and the original thereof No. 2,269,503).

33. Further pleading to paragraphs (17), (25), (26), (31) and (34) of the Third Amended Petition, respondent under and in accordance with Rule 12 of the Rules of Civil Procedure moves that the Third Amended Petition be dismissed with respect to said paragraphs in advance of the trial of this cause on the ground that said paragraphs fail to state a claim or claims upon which relief can be granted, and respondent further moves that, upon the granting of the above motion to dismiss, the related portions of petitioner's prayer for relief be stricken.

73 34. Respondent, in further answering the Third Amended Petition filed herein, says that in said agreement of December 20, 1940 (Pet. Exh. 4) between petitioner and respondent, petitioner warranted itself to be the owner of the entire right, title and interest in and to said Larson Application Serial No. 232,723, and agreed, among other things, in paragraph numbered 2 thereof, that it would not after a specified time "directly or indirectly, infringe any of the claims (now or hereafter allowed) in said Larson application, Serial No. 232,723 and said Zimmerman applications, or either of them, or any patent that may issue thereon"; that said agreement further provides, in paragraph numbered 3 thereof, that petitioner "agrees not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications"; that said Zimmerman applications and the Larson application referred to in said paragraphs of said agreement were the Zimmerman applications Serial Nos. 175,863 and 210,869 maturing into Letters Patent Nos. 2,283,888 and Re. 22,219 (and the original thereof No. 2,269,503), respectively, in suit, and the Larson application, Serial No. 232,723, maturing into Letters Patent No. 2,279,792 in suit.

Respondent further says that petitioner, as assignor of the Larson application Serial No. 232,723 which matured into Letters Patent No. 2,279,792 and as a party in interest in Patent Office Interference No. 77,565 as well as by the express provisions of said agreement of De-

cember 20, 1940 (Pet. Exh. 4), is without right and is estopped from questioning or contesting in any manner the validity of said Letters Patent No. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and
74 2,283,888, or any of them, and that petitioner's attack on the validity of said Letters Patent is in direct violation of the terms and conditions of said agreement of December 20, 1940 (Pet. Exh. 4).

Wherefore, the following portions of the Third Amended Petition filed herein fail to state a claim upon which relief can be granted, and under and in accordance with Rule 12 of the Rules of Civil Procedure the Third Amended Petition should be dismissed in and with respect to the same in advance of the trial of this cause:

That part of paragraph (6) which reads as follows: "and whether said patents are good and valid at law,";

That part of paragraph (7) which reads as follows: "are wholly invalid or";

All of paragraphs (10), (11), (12), (13), (14), (15), (16), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (31), (32) and (34);

Those parts of paragraph (17) which read as follows:

line 14, "ambiguous",

lines 15 and 16, "in violation of the Patent Act (Title 35, U. S. Code, Sec. 33; R. S. 4888)",

line 21, "unlawfully",

lines 23 and 24, "be sufficiently vague in terms to", and

line 29, beginning with the word "whereas" to the end of paragraph (17);

Those parts of the prayer for relief which relate to the foregoing paragraphs of the Third Amended Petition; and
75 All other portions or allegations of the Third Amended Petition which directly or indirectly relate to invalidity of the torque wrench patents in suit.

35. Respondent denies that petitioner is entitled to the relief prayed for in its Third Amended Petition or any other relief against respondent.

Automotive Maintenance Machinery Co.
(Respondent.)

By Davis, Lindsey, Smith & Shonts
Its Attorneys.

Of Counsel:
Raymond E. Fidler.

Service of the foregoing Answer to Third Amended Petition for Declaratory Decree and receipt of a copy thereof is hereby acknowledged this 10th day of March, 1943.

Harry C. Alberts
Attorney for Petitioner.
Dawson, Ooms & Booth
Attorney for Intervenor.

76 And afterwards on, to wit, the 23rd day of November, 1942 came the Respondent in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Amended and Supplemental First Counterclaim in words and figures following, to wit:

77 IN THE UNITED STATES DISTRICT COURT.

(Caption—4451)

RESPONDENT'S AMENDED AND SUPPLEMENTAL FIRST COUNTERCLAIM.

Now comes, Automotive Maintenance Machinery Co., the respondent in the above-entitled cause, and by leave of Court first had and obtained, files this its Amended and Supplemental First Counterclaim in this cause, and says:

1. Respondent, Automotive Maintenance Machinery Co., is a corporation organized under and existing by virtue of the laws of the State of Illinois, and has its principal place of business at North Chicago, Illinois.

2. Petitioner, Snap-On Tools Corporation, as respondent is informed and believes and therefore avers, is a corporation organized under and existing by virtue of the laws of the State of Delaware, and has its principal place of business at Kenosha, Wisconsin.

78 3. This is a counterclaim arising under the laws of the United States for infringement of United States Letters Patent and for an accounting of profits and damages and for an injunction. Jurisdiction of this Court is further based upon the Second Amended Petition for Declaratory Decree filed herein by petitioner under the patent laws of the United States.

4. On January 13, 1942, United States Letters Patent No. 2,269,503 were duly and legally issued to respondent, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench, and on November 3, 1942, reissue of said patent was duly and legally issued to respondent as Letters Patent No. Re. 22,219; and since the respective issue dates of said Letters Patent respondent has been the sole and exclusive owner thereof, and still is the sole and exclusive owner of said reissue patent.

5. On April 14, 1942, United States Letters Patent No. 2,279,792 were duly and legally issued to respondent, Automotive Maintenance Machinery Co., on an application filed by Kenneth R. Larson for an invention in Torque Wrench; and since that date respondent has been and still is the sole and exclusive owner of said Letters Patent.

6. On May 19, 1942, United States Letters Patent No. 2,283,888 were duly and legally issued to respondent, Automotive Maintenance Machinery Co., on an application filed by Herman W. Zimmerman for an invention in Torque Measuring Wrench; and since that date respondent has been and still is the sole and exclusive owner of said Letters Patent.

7. As of December 20, 1940, respondent, Automotive Maintenance Machinery Co., and petitioner, Snap-On Tools Corporation, entered into a certain agreement in and with respect to the inventions described and claimed in said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and each of them, wherein said petitioner, who was then the owner of the entire right, title and interest in and to the application eventuating into said Larson patent No. 2,279,792, *inter alia* assigned to said Kenneth R. Larson and Precision Instrument Manufacturing Company of Des Plaines, Illinois, its entire right, title and interest in and to said Larson application, and agreed that, upon the completion of certain orders for wrenches on hand as of the date of said agreement, to discontinue the manufacture and/or sale and/or use of torque wrenches embodying the inventions of each of said Letters Patent Nos. Re. 22,219 (and original thereof No. 2,269,503), 2,279,792 and 2,283,888, and further agreed that they would not thereafter, directly or indirectly, infringe said Letters Patent when they should

issue, and further agreed not to, directly or indirectly, contest the validity of any claim or claims of said Letters Patent, or any of them, all as shown by a copy of said agreement of December 20, 1940, attached to the Second Amended Petition filed herein as Exhibit 4.

8. The said inventions described and claimed in said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and each of them, are of great utility and value; said inventions have been and are of great benefit and advantage to respondent and the public; and the trade and public, including said petitioner, have acknowledged and acquiesced in the validity of said Letters Patent, and each of them, and in the aforesaid rights of respondent.

9. Petitioner has been given written notice by re-
80 spondent, Automotive Maintenance Machinery Co., of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888 and of its infringement thereof; petitioner had knowledge of the applications maturing into said patents Nos. 2,269,503, 2,279,792 and 2,283,888 long prior to the issuance thereof; and respondent has placed the required statutory notice of said Letters Patent Nos. 2,269,503 and 2,283,888 on torque wrenches made and sold by it under said Letters Patent, which torque wrenches have been made and sold in large quantities by respondent.

10. The petitioner has, within the last six years, and prior to the filing of its Second Amended Petition herein, and subsequent to the issuance of said Letters Patent Nos. Re. 22,219 (and the original thereof No. 2,269,503), 2,279,792 and 2,283,888, and each of them, infringed said Letters Patent, and each of them, in defiance of respondent's rights acknowledged and acquiesced in by the petitioner and further in violation of the terms and conditions of said agreement entered into as of December 20, 1940, and petitioner continues to infringe said Letters Patent, and each of them, by wilfully, maliciously and without the consent or license of respondent, making or causing to be made, selling or causing to be sold and using or causing to be used, within the Northern District of Illinois, Eastern Division thereof, and elsewhere within the United States, torque wrenches made in accordance with and embodying the inventions of said Letters Patent and in violation of

the terms and conditions of said agreement entered into as of December 20, 1940.

Automotive Maintenance Machinery Co.,
(*Respondent*).
By Davis, Lindsey, Smith & Shonts,
Its Attorneys,
332 South Michigan Avenue
Chicago, Illinois.

Of Counsel:
Raymond E. Fidler,
Harry W. Lindsey, Jr.

81 And afterwards on, to wit, the 14th day of December, 1942 came the Petitioner in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Answer to Respondent's First and Second Counterclaims, a portion of which is in words and figures following, to wit:

82 IN THE UNITED STATES DISTRICT COURT.
(Caption—445)

ANSWER OF PETITIONER TO RESPONDENT'S FIRST AND SECOND COUNTERCLAIMS.

Now Comes Petitioner, Snap-On Tools Corporation, a Delaware Corporation; and files its Answer to Resondent's First and Second Counterclaims filed herein on September 23, 1942 and amended November 23, 1942, alleging:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph 2.
3. Admits the allegations of Paragraph 3.
4. Petitioner admits that Letters Patent No. 2,269,503 were issued to Respondent on January 13, 1942, but denies that they were duly and legally issued; petitioner denies that Reissue Letters Patent 22,219 were legally issued and denies that there existed any statutory ground for the reissue of Letters Patent No. 2,269,503. Petitioner is not informed as to the ownership of said original Letters Patent and its reissue and therefore denies Respondent's allegations with respect thereto.

83 5. Petitioner admits that Letters Patent No. 2,279,792 were issued to Respondent on April 14, 1942, but denies that they were duly and legally issued. Petitioner

is not informed as to the ownership of said Letters Patent and therefore denies respondent's allegations with respect thereto. Petitioner further denies that claims 31 and 32 of said Letters Patent were legally allowed and alleges that said claims are not supported by the specifications and do not comply with R.S. 4888 (U. S. Code, Title 35, Sec. 33).

6. Petitioner admits that Letters Patent No. 2,283,888 were issued to respondent on May 19, 1942, but denies that they were duly and legally issued. Petitioner is not informed as to the ownership of said Letters Patent and therefore denies respondent's allegations with respect thereto. Petitioner further denies that claim 38 of said Letters Patent was legally allowed and alleges that said claim is not supported by the specification and does not comply with R.S. 4888 (U. S. Code, Title 35, Sec. 33).

7. Petitioner admits that it did, on December 20, 1940, sign the document attached to its Second Amended Petition as Exhibit 4, but petitioner alleges that at the time of the signing thereof not one of the three patents sued on herein had issued and that the alleged subject matter of said alleged contract was not in existence or certain, wherefore there was no contract of the scope and effect asserted by respondent. Petitioner further alleges that said agreement did not contemplate or embrace Reissue Letters Patent No. 22,219.

Petitioner further alleges that said agreement includes provisions restraining the sale of wrenches moving in interstate commerce in violation of the Sherman Act and said agreement is therefore void.

84 Petitioner repeats here by reference paragraphs 27, 28 and 30 of its Second Amended Petition and alleges said agreement is therefore void.

8. Petitioner denies the allegations of Paragraph 8 and alleges that respondent has been unable to make commercially satisfactory and accurate wrenches following the teachings of the three patents sued on in respondent's First Counterclaim, and that the wrenches made under said patents are inferior to those sold by petitioner and manufactured by the Intervenor, Precision Instrument Manufacting Company, and petitioner denies that there has been any acquiescence in the asserted validity of said Letters Patents or any of them.

9. Petitioner denies that respondent has ever given petitioner notice of any alleged infringement of any of said Letters Patent except No. 2,279,792 and No. 2,283,888

of which respondent wrote petitioner on April 18, 1942 and July 7, 1942, respectively, except by institution of suit against petitioner's supplier, intervenor herein, on June 15, 1942, in which only Letters Patent Nos. 2,279,792 and 2,283,888 were sued on, and no charge of infringement of Letters Patent No. 2,269,503 was made until the Amended Complaint was filed against intervenor on July 22, 1942. Petitioner denies that it has ever been given notice of alleged infringement of Reissue Letters Patent No. 22,219. Petitioner is without knowledge of whether or not respondent has made and sold wrenches in large quantities or marked any wrenches under said Letters Patents 2,269,503 and 2,283,888 and petitioner therefore denies the allegation.

10. Petitioner denies the allegations of Paragraph 10, and as an affirmative defense repeats here by reference paragraphs 8 and 9 of its Second Amended Petition for a Declaratory Decree, and extends same to Reissue No. 22,219.

85 11. Petitioner alleges that the intervenor, Precision Instrument Manufacturing Company, has, through its employes, perfected a resistance measuring wrench which said company has subsequently manufactured and for whom petitioner has exclusively sold said measuring wrenches in large quantities; and said wrench embodies a new principle of design and operation never theretofore incorporated into a similar instrument; that respondent has for many years without success sought to produce a satisfactory resistance measuring wrench and has produced a large number of different designs of resistance measuring wrenches upon which respondent has procured a large number of patents in an effort to prevent others from manufacturing a satisfactory resistance measuring wrench; that when in September, 1941 petitioner publicly offered intervenor's new wrench, respondent's attorneys procured a specimen thereof and with this specimen before respondent's attorneys, said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to purport to embrace the intervenor's newly perfected wrench, in violation of the Patent Act (Title 35, U. S. Code, Sec. 33, R. S. 4888), which claims petitioner's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States Letters Patents No. 2,279,792 and 2,283,888 and subsequently respondent unlawfully procured Reissue Patent No. 22,219, all for the sole purpose of procuring claims in said Letters Patent that might be suffi-

ciently vague in terms as to appear to cover the resistance measuring wrenches being sold by the petitioner and to give color to this counterclaim for alleged infringement, whereas respondent and its attorneys well knew that said wrenches were not the invention of the applicant for each of said Letters Patents, but involved an entirely differ-
56 ent principle of construction and operation.

12. Petitioner repeats here by reference paragraphs 10, 11, 12, 26, and 29 of its Second Amended Petition for a Declaratory Decree.

13. Petitioner alleges that plaintiff has, by the devices alleged in Paragraphs 11 and 12 hereof, attempted to monopolize the manufacture and sale of resistance measuring wrenches, which move in interstate commerce, and has sought to procure patents covering devices which were not the inventions of the applications for each of said letters patent into whose applications respondent has inserted claims intending to cover the invention of others.

14. Petitioner further alleges that when respondent filed its application for Reissue Letters Patent No. 22,219, intervenor, Precision Instrument Manufacturing Company had long been selling wrenches of the type accused in this suit, as respondent well knew, which did not infringe any claim of the Letters Patent 2,269,703, which was subsequently reissued as Reissue No. 22219, whereby Precision Instrument Manufacturing Company assigned intervening rights with respect to said Reissue Letters Patent and cannot be held to infringe the claims thereof.

15. Petitioner repeats here by reference paragraph 25 of the Second Amended Petition for a Declaratory Decree.

16. Petitioner alleges that respondent because of the matters alleged in paragraphs 11, 12, and 13 hereof, as well as other inequitable conduct, comes into this Court with unclean hands and may not maintain its counterclaims.

17. Petitioner alleges that the claims herein asserted against the resistance measuring wrenches sold by the petitioner herein, do not read upon said wrenches and are not infringed thereby because of the restricted meaning which must be given said claims in the light of the
57 respective specifications of each of the Letters Patent sued upon, the amendments made to such claims and the cancellations made of other claims during the prosecution of the respective applications for said Letters Patent, and the existing art of resistance measuring wrenches existent at the time of the alleged inventions of said Let-

fers Patent and in part represented by the wrenches described in the following Letters Patent:

United States Patents.

Number	Date	Patentee
78,604	June 2, 1868	O'Neil
164,100	June 8, 1875	Plymale
414,615	Nov. 5, 1889	Walker
641,195	Jan. 9, 1900	Culmer, et al
832,064	Oct. 2, 1906	Keeler
1,048,488	Dec. 31, 1912	Blanchard, et al
1,294,171	Feb. 11, 1919	Rockwell
1,512,192	Oct. 21, 1924	Benko
1,685,916	Oct. 2, 1928	Hans, et al
1,728,552	Sept. 17, 1929	Kennedy, et al
1,809,087	June 9, 1931	Watrous
1,825,539	Sept. 29, 1931	Patton
1,830,997	Nov. 10, 1931	Gumprich
1,848,488	Mar. 8, 1932	Linendoll
1,900,581	Mar. 7, 1933	Oliver
1,926,219	Sept. 5, 1933	Wejgt
2,007,880	July 9, 1935	Sharp
2,063,622	Dec. 8, 1936	Pfeiffer
2,074,079	Mar. 16, 1937	Bahr, et al
2,144,731	Jan. 24, 1939	Zimmerman
2,159,354	May 23, 1939	Dunn
2,159,373	May 23, 1939	Dunn
2,167,520	Aug. 1, 1939	Kress
2,171,872	Sept. 5, 1939	Zimmerman
2,183,628	Dec. 19, 1939	Zimmerman
2,190,966	Feb. 20, 1940	Zimmerman
2,206,315	July 2, 1940	Zimmerman
2,211,401	Aug. 13, 1940	Zimmerman
2,116,955	May 3, 1938	Johnson
2,260,358	Oct. 28, 1941	Zimmerman
2,231,240	Feb. 11, 1941	Zimmerman
2,260,258	Oct. 28, 1941	Zimmerman
2,278,792	Apr. 14, 1942	Larson
2,283,707	May 19, 1942	Stutelvant
2,283,888	May 19, 1942	Zimmerman

Foreign Patents

French—621,277	1927	Andre-Pierre
British—399,901	1933	Battio, et al
British—423,477	1935	Salle

18. Petitioner repeats here by reference paragraph 13 of its Second Amended Petition, but in line 6 thereof changes the words "prior to the" to—after the prior—.

19. Petitioner repeats here by reference paragraphs 14, 15 and 16 of its Second Amended Petition.

20. Petitioner repeats here by reference paragraphs 21 to 24 inclusive of its Second Amended Petition for a Declaratory Decree.

21. Petitioner repeats here by reference paragraph 18 of its Second Amended Petition, extends same to Reissue No. 22,219 and further relies on any and all prior art patents cited in paragraph 17 of this answer.

22. Petitioner repeats here by reference paragraph 19 of its Second Amended Petition and further relies on any and all prior art patents cited in paragraph 17 of this answer.

23. Petitioner repeats here by reference paragraph 20 of its Second Amended Petition and further relies on any and all prior art patents cited in paragraph 17 of this answer.

24. Petitioner alleges that its resistance measuring wrench business is wholly devoted to the supplying of wrenches to the armed forces of the United States, and the defense industry of the United States, and that said wrenches are practically indispensable to the maintenance of aircraft, marine engines and mechanized war equipment, and that the restraints which respondent is attempting to impose upon petitioner, and the interference with its resistance wrench business which respondent is causing by the maintenance of these counterclaims will seriously impair the defense of the United States and so outweighs any asserted injury that might befall respondent if these counterclaims were not maintained that this Court of Equity should deny respondent all relief.

89 25. Petitioner further alleges that substantially all the resistance measuring wrenches sold by Snap-on Tools Corporation are for the United States and its contracting agents, and that respondent's only remedy for any alleged infringements of the Letters Patent sued upon herein by petitioner's sale of such wrenches for the United States and its agents is by a suit against the United States in the Court of Claims.

ANSWER OF PETITIONER TO RESPONDENT'S SECOND COUNTERCLAIM.

90 12. Petitioner denies each and every allegation of both counterclaims not herein expressly admitted and further denies that the respondent is entitled to the relief or any part of the relief demanded, and prays that the counterclaims be dismissed at respondent's costs.

Snap-on Tools Corporation,
By: Harry C. Alberts,
Harry C. Alberts,
Petitioner's Attorney,
38 S. Dearborn St.
Chicago, Illinois.

December 14, 1942.

91 And afterwards on, to wit, the 1st day of March, 1943 came the Intervenor in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Amended Answer to Respondent's Amended and Supplemental First Counterclaim, in words and figures following, to wit:

92 IN THE UNITED STATES DISTRICT COURT.
(Caption—4451)

AMENDED ANSWER OF INTERVENOR TO RESPONDENT'S AMENDED AND SUPPLEMENTAL FIRST COUNTERCLAIM.

Now Comes Intervenor, Precision Instrument Manufacturing Company, a corporation of Illinois, by leave of Court, and files this Amended Answer to Respondent's Amended and Supplemental First Counterclaim filed herein on November 23, 1942, alleging:

1. Intervenor admits the allegations of Paragraph 1.
2. Intervenor admits the allegations of Paragraph 2.
3. Intervenor admits the allegations of Para-
93 graph 3.
4. Intervenor admits that Letters Patent No. 2,269,503 were issued to Respondent on January 13, 1942, but denies that they were duly and legally issued. Intervenor is not informed as to the ownership of said Letters Patent

and therefore denies Respondent's allegations with respect thereto. Intervenor denies that Reissue Letters Patent No. 22,219 were legally granted and denies that there existed any statutory ground for the reissue of Letters Patent No. 2,269,503.

5. Intervenor admits that Letters Patent No. 2,279,792 were issued to Respondent on April 14, 1942, but denies that they were duly and legally issued. Intervenor is not informed as to the ownership of said Letters Patent and therefore denies Respondent's allegations with respect thereto. Intervenor denies that claims 31 and 32 were legally allowed, and alleges that said claims are not supported by the specification and do not comply with R.S. 4888 (U. S. Code, Title 35, sec. 33).

6. Intervenor admits that Letters Patent No. 2,283,888 were issued to Respondent on May 19, 1942, but denies that they were duly and legally issued. Intervenor
94 is not informed as to the ownership of said Letters Patent, and therefore denies Respondent's allegations with respect thereto. Intervenor denies that claim 38 was legally allowed, and alleges that said claim is not supported by the specification, and does not comply with R.S. 4888 (U. S. Code, Title 35, sec. 33).

7. a. Intervenor admits that it did, on December 20, 1940, sign the document attached to the Amended Petition herein as Exhibit 6, but Intervenor alleges that at the time of the signing thereof not one of the three patents sued on herein had issued and that the alleged subject matter of said alleged contract was not in existence or certain, wherefore there was no contract of the scope and effect asserted by Respondent. Intervenor further alleges that said agreement did not contemplate or embrace Reissue Letters Patent No. 22,219.

b. Intervenor alleges that the application for Letters Patent No. 2,279,792 (herein called Larson application) was by the United States Patent Office declared to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503 (herein called Zimmerman applications) in Interference No. 77,565, in which the question to be determined was whether the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; in October, 1940, testimony of several witnesses was taken under oath on behalf
95 of the party Larson at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State

of Illinois; Kenneth R. Larson, one of the witnesses, did then and there knowingly falsely testify on his own behalf under oath, that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934, and that he had produced several models, which he identified, and a drawing which he identified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938; the issues to which said testimony so directed were critical issues in the interference and the testimony was material to said issues, said testimony constituted perjury under the statutes of the United States (Title 18, U. S. Code, sec. 231), and of the State of Illinois (Chap. 38, Ill. Rev. Stat., sec. 473); respondent and its agents were aware that said testimony was false, and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and Intervenor transferred to Respondent the Larson application and the sum of $500, and executed the agreement, Exhibit 6, and Respondent promised to withhold its complaint and suppress the evidence of said perjury if the Larson application and the sum of $500 was transferred to Respon-
96 dent and Intervenor and Larson executed the agreement, Exhibit 6, and if Petitioner would execute the agreement, Exhibit 4; whereupon in violation of law (Title 18, U. S. Code, sec. 250, 251; Chap. 38, Ill. Rev. Stat., sec. 135) Respondent did procure the transfer to it of the Larson application and the sum of $500, and did procure the execution by Intervenor and Larson of the agreement, Exhibit 6, and by Petitioner the agreement, Exhibit 4, and Respondent did thereafter suppress the evidence of said perjury and withhold making its complaint to the proper officers, and did thereby compound a crime in violation of the statutes hereinabove referred to; wherefore said agreement, Exhibit 6, and said agreement, Exhibit 4, and the transaction of which they are a part, are unlawful, null, and void.

e. Intervenor further alleges that said agreements, Exhibits 6 and 4, include a provision prohibiting Intervenor from manufacturing and selling any torque wrenches, which are articles moving in interstate commerce, responding to the claims of the Letters Patent here in suit, and prohibits Intervenor from contesting the validity of said patents, which prohibitions and covenants constitute re-

straints in violation of the Sherman Act (Title 15, U. S. Code, sec. 1) and are void unless sustained by valid patents; Intervenor alleges said patents are invalid and said agreements are therefore void.

97 8. Intervenor denies the allegations of Paragraph 8 and alleges that Respondent has been unable to make commercially satisfactory and accurate wrenches following the teachings of the three patents sued on herein, and that the wrenches made under said patents are inferior to those made and sold by Intervenor, Precision Instrument Manufacturing Company, and Intervenor denies that there has been any acquiescence in the asserted validity of said Letters Patent, or any of them.

9. Intervenor is without knowledge of whether Respondent has made, sold, or marked any wrenches under said Letters Patent, and Intervenor therefore denies the allegation, and Intervenor denies that Respondent has ever given Intervenor notice of any alleged infringement of any of said Letters Patent except No. 2,279,792, of which Respondent wrote Intervenor on April 18, 1942, except by institution of a suit known as Automotive Maintenance Machinery Co. v. Precision Instrument Manufacturing Company, Civil Docket No. 4382, on June 15, 1942, in which only Letters Patent Nos. 2,279,792 and 2,283,888 were sued on, and no charge of infringement of Letters Patent No. 2,269,503 was made until the Amended Complaint was filed in said suit Civil Docket No. 4382 on July 22, 1942. Whether Respondent gave Petitioner notice of alleged infringement of said Letters Patent is not known to Intervenor. Intervenor has not been given notice of alleged infringement of Reissue Letters Patent No. 22,219 except by the pleadings in this suit and Civil Action No. 4382.

98 10. Intervenor denies the allegations of Paragraph 10.

11. Intervenor alleges that it has, through its employees, perfected a resistance measuring wrench which Intervenor has subsequently manufactured and sold in large quantities, that said wrench embodies a new principle of design and operation never theretofore incorporated into a similar instrument, that Respondent has for many years without success sought to produce a satisfactory resistance measuring wrench and has produced a large number of different designs of resistance measuring

wrenches upon which Respondent has procured a large number of patents in an effort to prevent others from manufacturing a satisfactory resistance measuring wrench; that when in October, 1941, Intervenor publicly offered its wrench, Respondent's attorneys procured a specimen thereof and with this specimen before Respondent's attorneys, said attorneys drew patent claims designedly and deliberately phrased in ambiguous terms to purport to embrace Intervenor's wrench, in violation of the Patent Act (Title 35, U. S. Code, Sec. 33; R. S. 4888), which claims Respondent's attorneys inserted under Rule 78 of the United States Patent Office into the then pending and allowed applications which finally matured into United States Letters Patent Nos. 2,279,792 and 2,283,888, and subsequently Respondent unlawfully procurred Reissue Letters Patent No. 22,219, all for the sole purpose of procuring claims in said Letters Patent that might be sufficiently vague in terms as to appear to cover the re-
99 sistance measuring wrenches being made and sold by Intervenor and to give color to Respondent's suit for alleged infringement, Civil Docket No. 4382, whereas Respondent and its attorneys well knew that said wrenches were not the invention of the applicants for said Letters Patent, but involved an entirely different principle of construction and operation.

12. Intervenor alleges that Respondent has, by the devices alleged in Paragraph 11 hereof, attempted to monopolize the manufacture and sale of resistance measuring wrenches, which move in interstate commerce, and has sought to procure patents covering devices which were not the inventions of the applicants for patents into whose applications Respondent has inserted claims pretending to cover the inventions of others.

13. Intervenor alleges that Respondent, because of the matters alleged in Paragraphs 7b, 7c, and 11 and 12 hereof, comes into this Court with unclean hands and may not maintain its Counterclaim.

14. Intervenor alleges that the claims herein asserted against the resistance measuring wrenches made and sold by the Intervenor herein, do not read upon said wrenches and are not infringed thereby because of the re-
100 stricted meaning which must be given said claims in the light of the respective specifications of each of the Letters Patent sued upon, the amendments made to

such claims and the cancellation made of other claims during the prosecution of the respective applications for said Letters Patent, and the existing art of resistance measuring wrenches extant at the time of the alleged inventions of said Letters Patent, and in part represented by the wrenches described in the following Letters Patent:

	Number	Date	Patentee
U. S.	78,604	June 2, 1868	O'Neil
	164,100	June 8, 1875	Plymale
	641,195	Jan. 9, 1900	Culmer et al.
	832,064	Oct. 2, 1906	Keeler
	1,294,171	Feb. 11, 1919	Rockwell
	1,512,192	Oct. 21, 1924	Benko
	1,664,776	Apr. 3, 1928	Heise
	1,728,552	Sept. 17, 1929	Kennedy et al.
	1,809,087	June 9, 1931	Watrous
	1,825,539	Sept. 29, 1931	Patton
	1,830,997	Nov. 10, 1931	Gumprich
	1,900,581	Mar. 7, 1933	Oliver
	1,925,219	Sept. 5, 1933	Weight
	2,007,880	July 9, 1935	Sharp
	2,063,622	Dec. 8, 1936	Pfeiffer
	2,074,079	Mar. 16, 1937	Bahr et al.
	2,115,955	May 3, 1938	Johnson
	2,144,731	Jan. 24, 1939	Zimmerman
	2,159,354	May 23, 1939	Dunn
	2,159,373	May 23, 1939	Dunn
	2,167,720	Aug. 1, 1939	Kress
	2,171,872	Sept. 5, 1939	Zimmerman
	2,183,633	Dec. 19, 1939	Zimmerman
	2,190,966	Feb. 20, 1940	Zimmerman
	2,199,553	May 7, 1940	Zimmerman
	2,206,315	July 2, 1940	Zimmerman
	2,211,401	Aug. 13, 1940	Zimmerman
	2,231,240	Feb. 11, 1941	Zimmerman
	2,260,358	Oct. 28, 1941	Zimmerman
	2,279,792	Apr. 14, 1942	Larson
	2,283,707	May 19, 1942	Stürtevant
	2,283,888	May 19, 1942	Zimmerman
British	399,901	1933	Battio et al.
	423,477	1935	Salle
French	621,277	Sept. 11, 1926	Virgne

101 15. Intervenor alleges that the resistance measuring wrench business of Intervenor is wholly devoted to the supplying of wrenches to the armed forces of the United States, and the defense industry of the United States, and that said wrenches are practically indispensable to the maintenance of aircraft, marine engines and mechanized war equipment, and that the restraints which Respondent is attempting to impose upon Intervenor, and its exclusive sales outlet, Petitioner, and the interference with Intervenor's business which Respondent is causing by the maintenance of its Counterclaim against Petitioner and its suit against Intervenor, Civil Docket No. 4382, will seriously impair the defense of the United States, and so outweighs any asserted injury that might befall Respondent if its Counterclaim were not maintained that this Court of Equity should deny Respondent all relief under the First Counterclaim.

16. Intervenor further alleges that substantially all the resistance measuring wrenches being made and sold by Petitioner and Intervenor are being manufactured by Intervenor for the United States and its contracting agents, and that Respondent's only remedy for any alleged infringements of the Letters Patent sued upon in the First Counterclaim is by a suit against the United States in the Court of Claims.

102 17. Intervenor further alleges that when Respondent filed its application for Reissue Letters Patent No. 22,219, Intervenor, Precision Instrument Manufacturing Company, had long been selling wrenches of the type accused in this suit, as Respondent well knew, which did not infringe any claim of the Letters Patent No. 2,269,503, which was subsequently reissued as Reissue No. 22,219, whereby Precision Instrument Manufacturing Company acquired intervening rights with respect to said Reissue Letters Patent, and cannot be held to infringe the claims thereof.

18. By the agreement, Exhibit 6, Respondent licensed Intervenor, Precision Instrument Manufacturing Company, to make and sell six thousand (6,000) wrenches of the type then being made and sold by said Intervenor in interstate commerce, which wrench was then not covered by any issued patent, and thereafter forbade Intervenor from selling such wrenches, which are articles moving in

interstate commerce; wherefore said agreement is in restraint of trade under the Sherman Anti-trust Act of the United States (Act of July 2, 1890, c. 647, 26 Stat. 209) and is illegal, as Respondent did not, at the time of the execution of said agreement, and does not now, have any valid United States Letters Patent which would support a restraint in interstate commerce. The Letters Patent upon which Respondent has brought this Counterclaim are invalid and void on the grounds that:

103 (a) The alleged inventions claimed therein do not constitute invention but merely changes common to those skilled in the art of wrench manufacture.

(b) The claims relied upon by Respondent herein are vague, indefinite, and ambiguous, and do not particularly point out and distinctly claim the part, improvement, or combination which the respective applicant for each patent claims as his invention or discovery, as required by R. S. 4888.

(c) The alleged inventions claimed in each of the patents in suit do not constitute invention over the disclosures of the patents set forth in paragraph 14 of Intervenor's Answer.

(d) The alleged inventions claimed in each of the patents in suit were not patentable because they were patented or described, prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, in the patents enumerated in paragraph 14 of Intervenor's Answer, and prior to the alleged invention thereof by patentees Zimmerman and Larson, were invented by the Patentees of the patents enumerated in paragraph 14 of the Answer, who reside at the respective residences named in their respective patents, and said alleged inventions were prior to the alleged invention thereof or more than two years before the filing of the respective applications therefor, invented by, known to, and publicly used and sold by Allen I. Dunn of Cedar Rapids, Iowa, Cedar Rapids Engineering Company of Cedar Rapids, Iowa, and Automotive Maintenance Machinery Company of North Chicago, Illinois.

(e) The alleged inventions claimed in claim 38 of Letters Patent No. 2,283,888 were not the inventions of Herman M. Zimmerman, who surreptitiously or unjustly obtained a patent therefor, but were in fact invented by

Kenneth R. Larson of Des Plaines, Illinois, who was using reasonable diligence in adapting and perfecting the same.

Casper W. Ooms
Attorney for Intervenor

February, 1943.

104 And afterwards on, to wit, the 6th day of August, 1943 there was filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to wit:

105 IN THE UNITED STATES DISTRICT COURT
(Caption 4382)

STIPULATION.

It is hereby stipulated and agreed by and between counsel for the respective parties that in view of the voluminous character of the pleadings of the respective parties in these consolidated actions resulting from various amendments thereto from time to time, only the pleadings of the respective parties in their final amended form shall be printed in the record on appeal, and that copies of the pleadings in their earlier forms shall be transmitted to the Court of Appeals along with the physical exhibits for detailed inspection of any or all of such earlier pleadings by said court should that become necessary.

It is further stipulated that in lieu of printing in full detail in the record on appeal the various pleadings in their earlier forms, summaries of the contents of such pleadings may be substituted in the printed record therefor. The summaries of the contents of the pleadings in their earlier forms are as follows:

106 Civil Action No. 4382.

(a) Automotive filed its Complaint on June 15, 1942, against Precision, Larson and Carlsen, alleging inter alia infringement of its patents Nos. 2,279,792 and 2,283,888 in violation of a certain contract of December 20, 1940 (Defendants' Exhibit 4) and praying for injunctive relief and for an accounting of profits and damages.

(b) On July 22, 1942, before defendants had answered, Automotive filed an Amended Complaint which was the

same as its original Complaint but alleged, in addition, infringement of its patent No. 2,269,503.

(e) On August 6, 1942, the Answer of Defendants to the Amended Complaint was filed, denying infringement and violation of the contract of December 20, 1940 (Defendants' Exhibit 4), charging plaintiff with unclean hands in inserting claims in the pending applications of two of the patents to allegedly cover defendants' commercial device and in attempting to monopolize the manufacture and sale of torque wrenches, and alleging that plaintiff's remedy for patent infringement by Precision's manufacture of wrenches for the United States and its agents lay in suit against the United States in the Court of Claims.

(d) On November 30, 1942, Automotive filed its Amended and Supplemental Complaint which was the same as its Amended Complaint except that reissue patent No. 22,219 was substituted for original patent No. 2,269,503. This final amended form of the Complaint shall be printed in full in the record on appeal.

107 (e) On December 14, 1942, the Answer of Defendants to Amended and Supplemental Complaint was filed, which was similar in form to its previous answer but alleged, in addition, that the agreement of December 20, 1940 (Defendants' Exhibit 4) was void in violation of the Sherman Act and that Precision had acquired intervening rights with respect to Reissue Patent No. 22,219.

(f) On December 30, 1942, defendants filed an Amendment to Answer to Amended and Supplemental Complaint adding an additional paragraph to their previous answer in which it was alleged that the contract of December 20, 1940 (Defendants' Exhibit 4) was in restraint of trade under the Sherman Anti-Trust Act because plaintiff did not have any valid patents to support such a restraint in interstate commerce. The amendment further alleged various grounds of invalidity of the patents in suit.

(g) On January 25, 1943 Judge Igoe entered an order upon plaintiff's motion dismissing the Complaint without prejudice with respect to the defendant Carlsen.

(h) On February 8, 1943, the Amended Answer of Defendants to Amended and Supplemental Complaint was filed. This amended answer shall be printed in full in the record on appeal.

Civil Action No. 4451.

(a) Snap-On Tools Corporation filed a Petition for Declaratory Decree against Automotive on July 6, 1942.

alleging inter alia that an actual controversy existed
108 between Snap-On and Automotive with respect to patent No. 2,279,792 and with respect to an agreement of December 20, 1940 (Defendant's Exhibit 5) and that said patent was invalid and not infringed, that said agreement had not been violated by Snap-On, and prayed that said patent be held invalid, that respondent be enjoined from suing or threatening Snap-On's customers with respect to infringement of said patent;

(b) On July 21, 1942, Snap-On filed an Amended Petition for Declaratory Decree which was substantially the same as its original petition except that it also included patent No. 2,283,888 also owned by Automotive.

(c) On July 31, 1942, Snap-On filed a Second Amended Petition for Declaratory Decree which was similar to its earlier forms of petition but included in addition patent No. 2,269,503, also owned by Automotive, and alleged in paragraph (30) as follows:

"(30) Petitioner alleges, upon information and belief, that respondent procured title to the application which matured into the aforesaid Larson patent No. 2,279,792 by charging the patentee, Kenneth R. Larson, with the crime of perjury which allegedly had been committed by said Larson and certain witnesses for said Larson in the testimony given by said witnesses under oath before a Notary Public in a proceedings pending in the United States Patent Office and known as Interference No. 77565, and by threatening said Larson with prosecution for perjury and by offering to conceal the commission of the charged crime and the evidence thereof upon the condition that said Larson would transfer to respondent said application and all title to the invention therein set forth; and petitioner alleges, upon information and belief, that respondent acquired title to the Larson application and the invention therein set forth and other considerations from said Larson and the Precision Instrument Mfg. Company according to the terms of an agreement between respondent and the said Larson and the Precision Instrument Mfg. Co., entered into on to-wit December 20, 1940 per attached
109 copy appended hereto as Exhibit No. 6; that the said contracts appended hereunto as Exhibits 4 and 6 were, upon information and belief, entered into under duress exerted by the respondent and to compound the criminal offense of perjury in violation of the criminal statute of the State of Illinois; wherefore said transactions and re-

spondent's pretended title to the aforesaid Larson patent No. 2,279,792 is void; petitioner further alleges, upon information and belief, that as a condition to the transfer of the title to the patent application eventuating into the said Larson patent No. 2,279,792, respondent demanded of petitioner the execution of the agreement hereunto appended as Exhibit No. 4 as part of the consideration for the compounding of the crime of perjury and petitioner was thereby compelled to execute the agreement hereunto appended as Exhibit 4 in violation of and contrary to the subsisting agreement between petitioner and said Kenneth R. Larson appended hereunto as Exhibit No. 5."

The Second Amended Petition further alleged that Automotive had conducted itself with unclean hands in procuring title to the Larson patent application, in inserting claims in the applications maturing into patents Nos. 2,279,792 and 2,283,888 to cover Snap-On's allegedly new wrench and in threatening Snap-On and Precision with action for patent infringement. In addition to the relief prayed for in its earlier petitions, Snap-On also prayed that patent No. 2,269,503 be declared invalid and not infringed, that Automotive be decreed not to be the owner of patent No. 2,279,792, that the contract of December 20, 1940 (Defendants' Exhibit 5) be declared null and void, and that Automotive be enjoined from instituting suits under said patents in suit because of the alleged unclean hands of Automotive in procuring said patents.

(d) Automotive, on September 23, 1942, filed an Answer to Second Amended Petition for Declaratory Decree and Counterclaims. In the answer Automotive admitted that an actual controversy existed between Snap-On and Automotive and alleged inter alia that patents Nos. 2,269,503, 2,279,792 and 2,283,888 were valid and infringed by Snap-On and that Snap-On had violated its contract of December 20, 1940 (Defendants' Exhibit 5), denied that Snap-On had the right to question or contest in any way the validity of said patents, or any of them, denied that said contracts of December 20, 1940 (Defendants' Exhibits 4 and 5) were entered into under duress or to compound perjury, and denied each and every allegation contained in Paragraph (30) of said Second Amended Petition.

Automotive filed two counterclaims. In the first counterclaim Automotive alleged inter alia infringement of its patents No. 2,269,503, 2,279,792 and 2,283,888 in violation

of the contract of December 20, 1940 (Defendants' Exhibit 5) by Snap-On. In the second counterclaim Automotive charged Snap-On with infringement of patent No. 1,936,612, also owned by Automotive and relating to a piston pin bearing hone; and with respect to said counterclaims Automotive prayed for injunctive relief against further infringement by Snap-On of said Letters Patent and for an accounting of profits and damages.

(e) On September 8, 1942, Precision intervened in Civil Action No. 4451 and filed an answer to Automotive's first counterclaim. In its answer, which was in substantially the same form as its answer filed in Civil Action No. 4382, Precision, as intervenor, denied infringement of patents Nos. 2,269,503, 2,279,792 and 2,283,888, and charged Automotive with unclean hands in inserting claims in the pending applications of two of the patents in suit to allegedly cover Precision's commercial device and in attempting to monopolize the manufacture and sale of torque wrenches.

(f) On November 23, 1942, Automotive filed its Amended and Supplemental First Counterclaim which was substantially the same as its first counterclaim as originally filed except that Reissue patent No. 22,219 was substituted for original patent No. 2,269,503. This Amended and Supplemental First Counterclaim shall be printed in full in the record on appeal.

(g) Snap-On, on December 14, 1942, filed the Answer of Petitioner to Respondent's Amended First and Second Counterclaims. With respect to the first counterclaim, Snap-On denied infringement and validity of the patents in suit and violation of the contract of December 20, 1940 (Defendants' Exhibit 5) and alleged that said agreement was void in violation of the Sherman Act and for the reasons set forth in certain paragraphs, including Paragraph (30), of its Second Amended Petition. With respect to the second counterclaim on the hone patent, Snap-On denied infringement and validity. Snap-On further prayed that each of the counterclaims be dismissed.

(h) Precision, as intervenor, also on December 14, 1942, filed the Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim, denying infringement of the torque wrench patents in suit and violation of the contract of December 20, 1940 (Defendants' Exhibit 4), and alleging that said contract was void in violation of the Sherman Act and that Automotive came

into court with unclean hands in inserting claims in the pending applications and the reissue applications of the patents in suit to allegedly cover defendants' commercial device, and in attempting to monopolize the manufacture and sale of torque wrenches.

112 (i) On January 13, 1943, Automotive filed a Motion to Dismiss Certain Portions of Second Amended Petition and Petitioner's Answer to Respondent's First Counterclaim, and also filed a Motion to Dismiss Certain Portions of Intervenor's Answer to Respondent's First Counterclaim, the portions sought to be dismissed relating to the question of validity, the allegations of unclean hands, the allegations with respect to intervening rights, the allegations that Automotive's remedy lay in a suit against the United States in the Court of Claims, the allegations with respect to violation of the Sherman Act by the provisions of the contracts of December 20, 1940 (Defendants' Exhibits 4 and 5), and with respect to the allegations charging Automotive with coercion and compounding of a felony in view of the alleged perjury of Larson and his other corroborating witnesses. With respect to these motions, counsel for the respective parties filed memoranda. These motions were never decided by the District Court.

(j) On March 1, 1943, while Automotive's Motions to Dismiss were pending, Snap-On filed its Third Amended Petition for Declaratory Decree. This Third Amended Petition shall be printed in full in the record on appeal.

(k) Precision as intervenor, also on March 1, 1943, filed its Amended Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim. This amended answer shall be printed in full in the record on appeal.

113 (l) Finally, on March 10, 1943, Automotive filed its Answer to Third Amended Petition for Declaratory Decree, which Answer shall be printed in full in the record on appeal.

Davis, Lindsey, Smith & Shonts,
Attorneys for Automotive Maintenance Machinery Co.

Casper W. Ooms,
Attorney for Precision Instrument Manufacturing Company and Kenneth R. Larson.

Will Freeman,
Attorneys for Snap-On Tools Corporation.

Chicago, Illinois,
August 5, 1943.

114 And on, to wit, the 1st day of March, 1943 came the respondent in Civil Action No. 4451 by its attorneys and filed in the Clerk's office of said Court its certain Motion for Order Transferring Civil Action No. 4451 to Executive Committee for Reassignment in words and figures following, to wit:

115 IN THE UNITED STATES DISTRICT COURT.

(Caption—4451)

MOTION.

Now comes Automotive Maintenance Machinery Co., respondent in the above-entitled action, and in accordance with Rule 42(a) of the Rules of Civil Procedure and with the established practice of this District Court, moves this Honorable Court for an order transferring the above-entitled action to the Executive Committee of this District Court for reassignment to the Honorable Judge Michael L. Igoe.

In support of this motion respondent shows this Honorable Court:

1. That on June 15, 1942, respondent, Automotive Maintenance Machinery Co., filed a Complaint in this District Court against Precision Instrument Manufacturing Company and Kenneth R. Larson charging patent infringement and praying injunctive relief and an accounting. That said action was given Civil Action No. 4382 and was assigned to Judge Michael L. Igoe.

116 2. That thereafter on July 6, 1942, petitioner, Stiap-On Tools Corporation, commenced the instant action by filing a petition for declaratory decree against respondent, claiming noninfringement and invalidity of respondent's patents and invalidity of a certain contract between the parties. That said action was given Civil Action No. 4451 and was assigned to Your Honor.

3. That on September 8, 1942, Precision Instrument Manufacturing Company, only one of the defendants in the earlier filed action No. 4382 before Judge Igoe, intervened in the present action No. 4451.

4. That on September 23, 1942, respondent filed its answer to the petition for declaratory decree and also filed counterclaims charging petitioner with patent infringement and praying injunctive relief and an accounting.

5. That the various pleadings filed on behalf of the parties in each of these actions have been amended at various times since the dates of their original filing, with the result that as the pleadings are now constituted they involve common questions or issues of law and fact, which are as follows:

(a) Whether or not respondent's patents Nos. Re. 22,219, 2,279,792 and 2,283,888 are infringed by a certain torque measuring wrench manufactured by intervenor herein and sold by petitioner herein. Therefore, the same patents and the same accused infringing wrench structure are involved in each action.

117 (b) Whether or not certain contracts, Exhibits 4 and 6, between respondent and petitioner and respondent and intervenor are good and valid in law. In each action these contracts are attacked on substantially the same grounds, namely, that they violate the Sherman Anti-Trust Act, and that they were entered into under duress, to compound a felony, to conceal a crime, etc.

(c) Whether or not petitioner and intervenor are estopped to deny validity of the three torque wrench patents in suit.

(d) If the petitioner and intervenor are not estopped to deny validity, whether the torque wrench patents are valid or invalid.

6. In short, the pleadings on file on behalf of respondent and intervenor in this action and on behalf of intervenor in action No. 4382 before Judge Igoe are expressed in substantially the same terminology, the phraseology of the pleadings of those parties in each case apparently following the same pattern.

7. That of the two actions, No. 4382 assigned to Judge Igoe bears the lower docket number and has already been set for trial by Judge Igoe for May 10, 1943. That the instant action has not been set for trial before Your Honor. That the said two actions involving common questions of law and fact should be consolidated for disposition and trial before Judge Igoe so as to avoid unnecessary costs and delay to the parties and unnecessary burden and

118 duplication of effort by this Court.

Davis, Lindsey, Smith & Shonts,
Attorneys for Respondent.

Of Counsel:
Raymond E. Fidler,
George N. Hibben.

119 And afterwards, to wit, on the 1st day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

120 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4451)

Monday, March 1, A. D. 1943.

Present: Honorable William H. Holly, District Judge.

It is ordered by the Court that this cause be and the same is hereby transferred to the Executive Committee of this Court for reassignment to the Calendar of the Honorable Michael L. Igoe, Judge of this Court.

121 And afterwards, to wit, on the 3rd day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, William H. Holly and Philip L. Sullivan, District Judges, appears the following entry, to wit:

122 DISTRICT COURT OF THE UNITED STATES.

(Caption—4451)

It Is Ordered that the above entitled cause be, and the same is hereby re-assigned to Judge Igoe.

Barnes,
Holly,
Philip L. Sullivan,
Executive Committee.

Chicago, March 3, 1943.

123 And afterwards on, to wit, the 9th day of March, 1943 came the Plaintiff-Respondent in Civil Actions No. 4382 and 4451 by its attorneys and filed in the Clerk's office of said Court its certain Motion to Consolidate in words and figures following to wit:

124 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382, 4451)

MOTION TO CONSOLIDATE.

Now comes Automotive Maintenance Machinery Co., plaintiff-respondent in the above entitled actions, in accordance with Rule 42 (a) of the Rules of Civil Procedure, and moves this Honorable Court for an order consolidating the above-entitled actions for further disposition and trial of any and all of the matters in issue therein.

In support of the foregoing motion it will be shown

that both of the above-entitled actions seek relief in respect to infringement of United States Letters Patent Nos. 2,279,792, 2,283,888 and Re. 22,219;

125 that the same accused device is involved in both suits, defendants Precision Instrument Manufacturing Company and Kenneth R. Larson being the manufacturer of said device, and petitioner Snap-On Tools Corporation being the seller and distributor thereof;

that defendant Precision Instrument Manufacturing Company has intervened in the above-entitled action (C. A. No. 4451) brought by Snap-On Tools Corporation against Automative Maintenance Machinery Co. under the Declaratory Judgment Act;

that the various pleadings filed on behalf of each of the parties in each of these actions have been amended at various times since the dates of their original filing with the result that the pleadings as now constituted involve, inter alia, the following common questions and issues of law and fact:

(a) Whether or not plaintiff-respondent's torque wrench patents Nos. 2,279,792, 2,283,888 and Re. 22,219 are infringed by the accused device;

(b) Whether or not certain contracts attached to the petition filed herein Exhibits 4 and 6 are good and valid at law, said contracts in each of the above-entitled actions being attacked on substantially the same grounds, namely, that they violate the Sherman Antitrust Act and that they were entered into under duress, through extortion, in misprision of a felony and to compound a felony;

126 (c) Whether or not defendant, Kenneth R. Larson, defendant intervenor, Precision Instrument Man-

ufacturing Company, and petitioner, Snap-On Tools Corporation, are estopped to deny validity of the torque wrench patents in suit;

(d) If said defendants, intervenor and petitioner are not estopped to deny validity of the torque wrench patents in suit, whether said patents are valid or invalid;

(e) Whether or not relief is barred to Automotive Maintenance Machinery Co., plaintiff-respondent, on the ground that it comes before this Court with unclean hands;

(f) Whether or not relief is barred to Automotive Maintenance Machinery Co., plaintiff-respondent, on the ground of intervening rights; and

(g) Whether or not defendants, intervenor and petitioner are entitled to raise the question of fraud in the procurement of the patents in suit;

that the action entitled Automotive Maintenance Machinery Co. *vs.* Precision Instrument Manufacturing Company and Kenneth R. Larson, Civil Action No. 4382, has been set for trial before your Honor on May 10, 1943;

127 that both of the above-entitled actions involve common questions of law and fact and should be consolidated for disposition and trial before your Honor so as to avoid unnecessary cost and delay to the parties and unnecessary duplication of effort by this Court; and

that in the above action entitled Snap-On Tools Corporation *vs.* Automotive Maintenance Machinery Co., Civil Action No. 4451, respondent, Automotive Maintenance Machinery Co., has filed a Second Counterclaim charging infringement of United States Letters Patent No. 1,936,612 by petitioner, Snap-On Tools Corporation, and an answer has been filed by said Snap-On Tools Corporation. This patent relates to bearing honing devices and is not related to the torque wrench patents Nos. 2,279,792, 2,283,888 and Re. 22,219 in suit. Automotive Maintenance Machinery Co., plaintiff-respondent, hereby consents to separation of the issues in respect to said Letters Patent No. 1,936,612, if such separation is deemed advisable by your Honor.

Davis, Lindsey, Smith & Shonts,
Attorneys for Plaintiff-Respondent.

Of Counsel:
Raymond E. Fidler,
Harry W. Lindsey, Jr.
Chicago, Illinois,
March 8, 1943.

128 And on, to wit, the 9th day of March, 1943 came the Plaintiff-Respondent in Civil Actions Nos. 4382 and 4451 by its attorneys and filed in the Clerk's office of said Court its certain Motion for An Order Directing Kenneth R. Larson to Appear and Testify in words and figures following, to wit:

129 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382, 4451)

MOTION FOR AN ORDER DIRECTING KENNETH R. LARSON TO APPEAR AND TESTIFY.

Now comes Automotive Maintenance Machinery Co., plaintiff-respondent in the above-entitled actions, and moves this Honorable Court for an Order directing Kenneth R. Larson

(1) to appear before this Court on a day certain and give testimony for purposes of discovery under Rules 26 and 43 of the Rules of Civil Procedure; and

(2) to bring with him and to produce under Rule 45 of the Rules of Civil Procedure at said certain time for purposes of testimony that he may give at said time the following documents:

130 (a) All of the original copy of all transcribed testimony taken on behalf of said Kenneth R. Larson in a certain interference proceeding No. 77,565, Kenneth R. Larson *vs.* Herman W. Zimmerman, pending in the United States Patent Office during the years 1939 and 1940, which testimony was taken before Esther Meltzer, a Notary Public in and for Cook County, Illinois, at the offices of Harry C. Alberts, 38 South Dearborn Street, Chicago, Illinois, beginning on or about October 24, 1940 and ending on or about November 4, 1940, which testimony was stenographically reported by one Thomas Rafferty of 10 North Clark Street, Chicago, Illinois, including the transcribed testimony given by witnesses for and on behalf of said Kenneth R. Larson, namely, said Kenneth R. Larson, Walter A. Carlsen, C. C. Whittaker, L. Hymes, Richard Barrgren, Henry C. Schultz, William Ladendorf, Harold Blake and R. C. Ford.

(b) All original physical and documentary exhibits referred to or offered in evidence or marked for identification during the taking of and forming a part of the above-

identified testimony on behalf of said Kenneth R. Larson in said Interference No. 77,565, and all original documents of which any of said documentary exhibits is a copy.

(c) Each and every notebook or other means employed by said Thomas Rafferty in taking down stenographically and reporting said testimony given by said above-named witnesses in said Interference No. 77,565 before said Notary Public, Esther Meltzer, at the offices of Harry C. Alberts, 38 South Dearborn Street, Chicago, Illinois, at the time above stated.

In support of the foregoing motion, plaintiff-respondent shows this Honorable Court:

That in the present actions which involve patent infringement plaintiff-respondent has charged defendant Kenneth R. Larson and defendant-intervenor, Precision Instrument Manufacturing Company, and petitioner, Snap-On Tools Corporation, with infringement of the Zimmerman patents Nos. Re. 22,219 and 2,283,888 and the Larson patent No. 2,279,792 owned by plaintiff-respondent;

131 That Kenneth R. Larson, defendant herein, is president of defendant-intervenor, Precision Instrument Manufacturing Company;

That all the parties to the present actions were, in December, 1940, involved in an interference proceeding in the United States Patent Office, No. 77,565, between the applications which became the Larson and Zimmerman patents in suit, the Larson application at that time being owned by petitioner, and the Zimmerman applications being owned by plaintiff-respondent. The question involved in said interference was whether Larson or Zimmerman was the first inventor in point of time of the common subject matter disclosed by said applications;

That after testimony had been taken on behalf of the party Larson, the interference was terminated by Larson conceding priority of invention to Zimmerman, and the contracts Exhibits 4, and 6, attached to the pleadings herein, were entered into between plaintiff-respondent and petitioner, and between plaintiff-respondent and the defendant Larson and defendant-intervenor, respectively, on December 20, 1940;

That by said contracts, Exhibits 4 and 6, plaintiff-respondent granted said Kenneth R. Larson, said Precision Instrument Manufacturing Company, and said Snap-On Tools Corporation licenses to manufacture and sell 6,000 wrenches of the type disclosed in and coming within the

scope of claims of the applications involved in the
132 interference and then on order from customers of the parties, and said Kenneth R. Larson, said Precision Instrument Manufacturing Company, and said Snap-On Tools Corporation agreed that they would not after disposition of said 6,000 wrenches infringe the claims of the Larson and Zimmerman applications or any patents that might issue thereon, and they further agreed not to contest the validity of the claims of said patents. That said 6,000 wrenches have been disposed of by said parties and they are now manufacturing and selling wrenches which are infringements of said patents in violation of said contracts;

That by the express provisions of the contracts, Exhibits 4 and 6, said Kenneth R. Larson, said Precision Instrument Manufacturing Company, and said Snap-On Tools Corporation are estopped to contest the validity of any of the claims of the patents in suit;

That in an attempt to escape from the binding effect of said contracts, Exhibits 4 and 6, said Kenneth R. Larson, said Precision Instrument Manufacturing Company; and said Snap-On Tools Corporation allege in their pleadings that said contracts are invalid and void, and to support said allegations of invalidity of said contracts said parties charge and aver that said Kenneth R. Larson, defendant herein, did commit perjury in violation of the criminal statutes of the United States (Title 18, U. S. Code, Sec.
133 231) and of the Criminal Statutes of the State of Illinois (Chapter 38, Ill. Rev. Stat., Sec. 473) in giving testimony in his own behalf in said Interference No. 77,565, and charge plaintiff-respondent herein and its agents with the crime of extortion by an informer in violation of the United States Criminal Statute, Title 18 U. S. Code, Sec. 251, with the crime of misprision of felony in violation of the United States Criminal Statute, Title 18 U. S. Code, Sec. 251, and with the crime of compounding a felony in violation of Illinois Criminal Statute, Chapter 38, Ill. Rev. Stat., Sec. 135, all of said alleged crimes being alleged as part of the transactions involving said agreements Exhibits 4 and 6;

That Automotive Maintenance Machinery Co., plaintiff-respondent herein, desires discovery of pertinent and material facts in respect to the issues raised by the pleadings herein, including said allegations of perjury and said charges of extortion, misprision and compounding a felony.

in order to fully protect its rights herein and defend itself against such charges;

That said allegations of perjury and said charges against said Automotive Maintenance Machinery Co. and its agents are criminal in nature;

That said allegations of perjury and said charges against Automotive Maintenance Machinery Co. and its agents, 134 being criminal in nature, any discovery in respect to the same should be under the control and direction of this Honorable Court in order that the rights of all parties concerned may be fully protected and your Honor may determine the propriety and admissibility of evidence sought to be deduced; and

That the discovery being at least in part directed toward criminal matters involving alleged and charged violations of United States and Illinois Criminal Statutes, of which cognizance should be taken by the proper Federal and State authorities, the examination for discovery should be made before your Honor in open court rather than by deposition in order that your Honor may be fully apprised as soon as possible as to the exact nature and basis of the criminal charges involved and may promptly direct the taking of such action as your Honor may deem necessary under the circumstances.

In support of section (2) of the foregoing motion, it will also be shown:

That copies of the testimony, exhibits and reporter's notebooks hereby sought to be produced have to do with the aforesaid testimony given by said Kenneth R. Larson in said Patent Office Interference No. 77,565, which testimony is alleged in the pleadings filed by defendants, Kenneth R. Larson and Precision Instrument Manufacturing Company, and petitioner, Snap-On Tools Corporation, 135 to be perjured testimony; wherefore said copies of testimony, said exhibits and said notebooks are relevant and material to the issues and their production is necessary for proper inquiry for discovery, not only for purposes of these suits but for purposes of any further inquiry or action that this Court may take in the premises.

Davis, Lindsey, Smith & Shonts,
Attorneys for Plaintiff-Respondent.

Of Counsel:
Raymond E. Fidler,
Harry W. Lindsey, Jr.
Chicago, Illinois,
March 8, 1943.

136 And on, to wit, the 9th day of March, 1943, came the attorneys for the plaintiff-respondent, Automotive Maintenance Machinery Co. and filed in the Clerk's office of said Court their certain Petition in Support of Plaintiff-Respondent's "Motion for an Order Directing Kenneth R. Larson to Appear and Testify" in words and figures following, to wit:

137 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382, 4451)

PETITION ON BEHALF OF AUTOMOTIVE'S ATTORNEYS IN SUPPORT OF PLAINTIFF-RESPONDENT'S "MOTION FOR AN ORDER DIRECTING KENNETH R. LARSON TO APPEAR AND TESTIFY".

We, Raymond E. Fidler and Harry W. Lindsey, Jr., of counsel for plaintiff-respondent, Automotive Maintenance Machinery Co. (called "Automotive"), file this petition and respectfully plead with the Court to grant Plaintiff's Motion for an Order directing the party Kenneth R. Larson, President of defendant-intervenor, Precision Instrument Mfg. Co. (called "Precision"), to appear and testify.

138 In support of this petition we say:

We are members of the firm of Davis, Lindsey, Smith & Shonts, attorneys for Automotive. Mr. Harry C. Alberts, attorney for petitioner, Snap-On Tools Corporation, (called "Snap-On"), was the attorney of record on behalf of Larson in the Larson *vs.* Zimmerman Interference referred to in the Motion. We represented Zimmerman whose applications (which later matured into two of the patents in suit) were owned by Automotive. Mr. Alberts took the depositions of Larson and eight other persons on behalf of Larson. With respect to the negotions resulting in the settlement agreement (Exh. 4) between Automotive and Snap-On, the then legal owner of the Larson application, Snap-On was represented by Mr. Harry C. Alberts, and with respect to the negotiations resulting in the settlement agreement (Exh. 6) between Automotive and Precision and Larson, Precision and Lar-

son were represented by Mr. M. K. Hobbs of the well-known and reputable firm of Haight, Goldstein and Hobbs.

Throughout the negotiations neither we, as attorneys or "agents" for Automotive, nor, to our best knowledge and belief, any officer of Automotive, including Mr. Frederick G. Wacker, its President, had any contact with any officer of either Snap-On or Precision or with Larson concerning settlement.

Precision's, Larson's and Snap-On's pleadings in these actions ayer that Larson committed perjury in giving evidence in the interference and they also charge Automotive and "its agents" with compounding the felony. We, 139 to the best of our knowledge and belief, were the only attorneys or "agents" of Automotive who took any active part in negotiating the settlement agreements and all of our contacts regarding said negotiations were with Mr. Hobbs and Mr. Alberts, except, as we now recall, Mr. Edward Haight, of the Haight firm, was present with Mr. Hobbs at one conference which Mr. Fidler had with Mr. Hobbs.

Seemingly, Precision, Larson and Snap-On all accuse us of compounding the felony of perjury.

In the interest of justice, not only on behalf of Automotive, but on our own behalf, we submit that it is necessary to proceed under the discovery rule to determine with preciseness just which "agents" (Mr. Fidler, Mr. Lindsey or some officer or employee) of Automotive, Snap-On, Precision and Larson accuse of having compounded the crime of perjury and just what acts, threats and other things Automotive and its "agents" are accused of having done or committed in furtherance of the compounding of said crime.

We respectfully urge that it is important to have discovery by examination of Larson before the Court in the interest of orderly procedure and prompt justice. Should Larson's deposition be taken and his counsel instruct him not to answer questions, propounded, repeated appearances before the Court on motions to compel Larson to answer would be necessary. Further, the Court would be in a position to advise Larson of his constitutional privileges, if any, and protect, if proper and in the interest of justice, the interests, rights and reputations of the various parties and their attorneys and also of Larson's eight 140 corroborating witnesses. Still further, if we are positively named as the "agents" who compounded the

felony, we would become witnesses and in all probability would feel constrained to withdraw from the cases, at least temporarily, as soon as—and if—we are specified as the "agents" of Automotive, and then have other counsel represent Automotive and us.

We recognize that this petition may be unusual. But the situation presented by the averments in Snap-On's, Precision's and Larson's pleadingse that Larson committed perjury and that Automotive and "its agents" compounded the crime (and also committed other penal offenses) warrants, we believe, this petition.

Respectfully submitted,

Raymond E. Fidler,
Harry W. Lindsey, Jr.

March 5, 1943.

141 And afterwards on, to wit, the 23rd day of March, 1943, came Precision Instrument Manufacturing Co. and Kenneth R. Larson, Defendants in Civil Action No. 4382 and Snap-On Tools Corporation, Petitioner in Civil Action No. 4451, by their attorneys and filed in the Clerk's office of said Court their certain Motion for Separate Trial, in words and figures following, to wit:

142 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382 and 4451)

MOTION FOR SEPARATE TRIAL.

Now comes Precision Instrument Manufacturing Co. and Kenneth R. Larson, Defendants, in Civil Action No. 4382, and Snap-On Tools Corporation, Petitioner in Civil Action No. 4451, and make this Motion for a separate trial of the issue raised in the pleadings in the two specified causes with respect to the validity of the contracts, Exhibits 4 and 6, which are at issue in this cause, and in support of this Motion movants say:

These suits are brought in part upon two contracts executed on December 20, 1940, by all of the parties to these two causes. In the pleadings these contracts are attacked by Defendants and Petitioner on the ground that they
143 were procured in violation of law by virtue of the matters set forth in paragraph 7B of Defendants'

amended answer, and paragraph 30 of Petitioner's third amended petition for declaratory decree, and that because of the matters therein alleged Plaintiff comes into this court with unclean hands and should be dismissed therefrom."

Plaintiff is relying upon said agreements in part to foreclose Defendants and Petitioner from contesting the validity of the patents in suit.

The proofs to be presented upon that issue are separate and preliminary to the proofs to be made in the patent cases which are also made by the pleadings herein, and can be more conveniently tried separately from the patent cases.

Plaintiff has filed a Motion herein asking for separate discovery with respect to the issue to which this Motion for separate trial relates.

Wherefore Defendants and Petitioner make this Motion for a separate trial of the issue of the validity of the documents, Exhibits 4 and 6, and ask that this Motion
144 for separate trial be continued for hearing upon March 27, 1943, at which time several Motions of Plaintiff now pending are set for hearing.

Casper W. Ooms,
Attorney for Defendants, Precision Instrument Manufacturing Co. and Kenneth R. Larson.
Harry C. Alberts,
Bair & Freeman,
Attorneys for Snap-On Tools Corporation.

March 22, 1943.

145 And afterwards, to wit, on the 27th day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

146 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382, 4451)

ORDER.

Upon application of plaintiff, Automotive Maintenance Machinery Co., for consolidation of Civil Action No. 4382 with Civil Action No. 4451, and upon consideration of the arguments made by the respective parties to these causes,

It Is Hereby Ordered that Civil Action No. 4451 be consolidated with Civil Action No. 4382 for all purposes and the case proceed in this Court under the title of Au-
147 tomative Maintenance Machinery Co., Plaintiff *vs.* Precision Instrument Manufacturing Company, Kenneth R. Larson, and Snap-On Tools Corporation, Defendants, Civil Action No. 4382, and that Snap-On Tools Corporation be proceeded against as a defendant in said cause.

Enter:

Igoe,
United States District Judge.

March 27, 1943.

148 And afterwards, to wit, on the 27th day of March, 1943, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

149 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4382)

Saturday, March 27th, A. D. 1943.

Present: Honorable Michael L. Igoe, District Judge.

The Court having heard the arguments of counsel for the parties on the motion for separate trial as to certain of the issues and being fully advised in the premises it is

Ordered that said motion be and the same is hereby allowed and K. R. Larson appears in open Court and his testimony is heard and concluded and it is

Ordered that this cause be and the same is hereby continued to May 10, A. D. 1943 for trial.

150 And afterwards, to wit, on the 20th day of April, 1943, being one of the days of the regular April term of said Court, the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, *District Judge*, appears the following entry, to wit:

151 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

ORDER.

Upon motions of defendant, Snap-On Tools Corporation, for leave of Harry C. Alberts to withdraw as attorney for Snap-On Tools Corporation and for a separate trial date of the patent issues raised in the pleadings as distinguished from the issues respecting the validity of the contracts, Exhibits 4 and 6, now set for May 10, 1943, and upon consideration of the arguments made by the respective parties to this cause, and it appearing that Harry C. Alberts shall be a material witness on the issues involving the validity of the contracts, Exhibits 4 and 6, and that Snap-On Tools Corporation is represented by additional counsel of record, Messrs. Bair & Freeman,

It Is Hereby Ordered that leave be and it is hereby given for Harry C. Alberts to withdraw as attorney for Snap-On Tools Corporation.

152 It Is Further Ordered that the patent issues raised by the pleadings in this cause be set for trial on a separate date from the issues involving the validity of the contracts, Exhibits 4 and 6, now set for May 10, 1943.

Enter:

Igoe,
United States District Judge.

April 20, 1943.

153 And afterwards on, to wit, the 3rd day of May, 1943, there was filed in the Clerk's office of said Court a certain Withdrawal of Appearance in words and figures following, to wit:

154 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

WITHDRAWAL OF APPEARANCE.

I hereby withdraw as counsel for Snap-On Tools Corporation pursuant to leave of Court.

This withdrawal has been delayed owing to plaintiff's suggestion that defendant, Snap-On Tools Corporation, present an amended answer to plaintiff's first and second counterclaims for the purpose of conforming it to the third amended petition for a declaratory decree filed by Snap-On Tools Corporation, subsequent to the filing of its initial answer to the first and second counterclaims.

Harry C. Alberts.

May 1, 1943.

Proof of Service.

Service of the foregoing Withdrawal of Appearance has been effected by mailing a true and complete copy thereof in a sealed envelope addressed to opposing counsel, Davis, Lindsey, Smith & Shouts, 332 S. Michigan Ave., Chicago, Ill. and to Casper W. Ooms, 209 S. La Salle St., Chicago, Ill., attorneys for Precision Instrument Mfg. Co., and to Messrs. Bair & Freeman, present attorneys for Snap-On Tools Corporation, Field Bldg., Chicago, Ill., and deposited at the Main Post Office Annex, this 1st day of May, 1943, with postage prepaid.

Harry C. Alberts.

155 And on, to wit, the 6th day of August, 1943 there were filed in the Clerk's office of said Court certain Plaintiff's Exhibits Nos. 63, 62 and 17, being the Stenographic Transcript of Proceedings and Testimony of Kenneth R. Larson, the Deposition of Walter Carlsen, and the Deposition of Joseph Johnson, portions of which are in words and figures following, to wit:

156 Stenographic Report of Testimony Taken in the above-entitled actions, before Honorable Michael L. Igoe, one of the Judges of said Court, on Saturday, March 27, A. D. 1943.

157 KENNETH R. LARSON, called as a witness herein by the Automotive Maintenance Machinery Co., having been first duly sworn, was examined and testified as follows:

Examination by Mr. Fidler.

Q. Where do you live, Mr. Larson?

The Court: Let us get his name first.

Mr. Fidler: Q. State your name?

A. Kenneth Larson.

Q. And where do you live, Mr. Larson?

A. 1206 Center street, Desplaines, Illinois.

Q. Now, you are the Kenneth R. Larson, one of the defendants in the action of Automotive *vs.* Precision, No. 4382, are you not?

A. That is right.

Q. And you are also president of Precision Instrument Manufacturing Company, another of the defendants in that case, are you not?

A. I am.

158 Q. And you are also the Kenneth R. Larson who is the patentee of one of the patents involved in this suit?

A. I am.

Q. And you are also the Kenneth R. Larson who was one of the parties involved in the Interference No. 77,565 about which something is said in the pleadings in this case?

A. That is right.

Q. And you are also the Kenneth R. Larson who was one of the parties to an agreement between Automotive, Precision and Larson and which is attached to the Complaint in that case as Exhibit 1?

A. That is right.

Q. Are you not?

A. Yes, sir.

Mr. Fidler: Now your Honor, I say that, except for the use of names, the Answer filed by the Intervenor Precision in the Snap-On case is substantially the same as the Answer in the Precision case, so far as the paragraph containing the allegations respecting perjury, and I will merely for convenience refer to the paragraph of the Answer in the Precision case in the following questions.

The Court: That is Action 4382?

159 Mr. Fidler: Action 4382. I have that Answer divided into sections, and if your Honor will permit, I will be glad to hand it to you, for ready reference.

The Court: I take it that that is the original Answer that you are talking about. The Answer to Supplemental Complaint, you are not talking about that?

Mr. Fidler: I am talking about the last Answer filed, which is Amended Answer of Defendants to Amended and Supplemental Complaint.

The Court: When was that filed?

Mr. Fidler: That was filed on February 8, 1943.

The Court: All right.

Mr. Lindsey: Here is paragraph 7 b. of the Precision Answer, a copy of it broke down, and this is paragraph 30 and I just thought it would be a little easier for your Honor to follow.

The Court: And the Answer you are talking about is the one filed February 8, 1943?

Mr. Fidler: That is right, your Honor, in the Precision case.

Q. Mr. Larson, did you approve the Amended Answer of defendants to Amended and Supplemental Complaint filed in the case of Automotive Maintenance Machinery Co. vs. Precision Instrument Manufacturing Company, No. 4382 on February 8, 1943?

160 A. Yes.

Q. Did you approve also the Answer filed on behalf of Precision as Intervenor in the Snap-On case?

A. Yes, I did.

Q. Now reading from paragraph 7 b. of the Answer referred to in the Precision case No. 4382, it is stated:

"Defendants allege that the application for Letters Patent No. 2,279,792 (herein called Larson application) was by the United States Patent Office declared to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503 (herein called Zimmerman applications) in Interference No. 77,565, in which the question to be determined was whether the party Larson had invented the subject matter of certain counts of said Interference prior to the party Zimmerman."

that statement is true, is it not?

A. Yes.

Q. Paragraph 7 b. of the Answer in Action No. 4382, which I have already identified, further states:

"in October, 1940, testimony of several witnesses was taken under oath on behalf of the party Larson at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois";

161 That statement is correct, is it not?

A. That is right.

Q. The Answer referred to in Action 4382 further states, and I am still speaking with respect to paragraph 7 b.:

"Kenneth R. Larson, one of the witnesses, did then and there knowingly falsely testify on his own behalf under oath, that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 1934,"—

The Witness: That is right.

Mr. Fidler: Q. (Continuing.)

"and that he had produced several models, which he identified, and a drawing which he identified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938";

Are those statements in paragraph 7 b. of that Answer true?

A. The statements are true.

Q. The statements which I have just read from paragraph 7 b. of your Answer?

A. That is right.

Q. Are they true?

A. They are true. I said that.

162 The Court: Wait a minute. If you want to look at this Answer, you may, Mr. Witness. Do you want to have a copy of the statements when he is asking you the questions?

He has one now?

Mr. Ooms: We will concede all those facts.

Mr. Freeman: I was going to suggest, to save time, there isn't any question but what this witness gave all the information to Casper Ooms, and as a result of the information given to Casper Ooms, he pleaded it.

The Witness: That is right.

Mr. Freeman: We will admit it.

Mr. Fidler: We are here for discovery, your Honor,

and the witness I think is the one who should speak in these respects.

The Court: All right, proceed.

I don't know whether it is necessary to ask him a separate question as to each paragraph. Why don't you ask him one question as to paragraph 7 b.?

Mr. Fidler: Q. Mr. Larson, I will ask you to read all of paragraph 7 b. of the Answer just identified, in Action 4382, and state whether or not all of the facts stated therein down to the part ending "of the State of Illinois 163 (Chap. 38, Ill. Rev. Stat., sec. 473)" are true?

A. That is true. I read it and it is true.

Q. Now, paragraph 7 b. further states, "Plaintiff and its agents were aware that said testimony was false,"—Now, who were those agents or who are the agents referred to in that statement?

A. That was Mr. Fidler and Mr. Lindsey and Mr. Wacker, as I understand.

Q. Did you ever talk to Mr. Wacker?

A. I never talked to Mr. Wacker at all.

Q. When was the first time that you ever saw Mr. Wacker?

A. I have never seen him that I know of, sir.

Q. Did you ever talk to Mr. Lindsey?

A. I have never talked to Mr. Lindsey.

Q. When was the first time that you ever saw him?

A. I was told this morning that that was Mr. Lindsey as he came in here.

Q. When did you ever talk to me?

A. At Mr. Alberts' office.

Q. And what was that occasion?

A. At the Interference proceedings.

Q. That was during the taking of testimony?

A. That is right.

164 Q. In the Interference?

A. That is right.

Q. At which time I attended during direct examination and cross-examined you?

A. That is right.

Q. You will also remember that I met you at Mr. Blake's home one evening—

A. That is right.

Q. In respect to a wrench that he had testified about?

A. That is right.

Q. And that is the only time that I had ever seen you?
A. Yes.
Q. Is that correct?
A. Yes, sir.
Q. Now, what is the basis of that statement that I just read, namely, that "Plaintiff and its agents were aware that said testimony was false"?
A. I was told by my counsel, Mr. Hobbs.
Q. You were? You say Mr. Hobbs?
A. That is right, and Mr. Alberts also, who is Snap-On Tools' attorney.
Q. What was the occasion of Mr. Alberts telling you that?
A. That they were aware of it when he was called to their office, and the first time that he had known that
165 there was any false testimony given, that is, Mr. Alberts, the first time he had even known anything of it is when he was told in your office.
Q. When did you tell Mr. Alberts the first time, that you had testified knowingly falsely in that Interference?
A. After he had come back from your office.
Q. How long after?
A. I believe it was the same day.
Q. And what did you tell Mr. Alberts in that respect? Give the exact words as near as you can?
A. I told him yes, that we did not make the drawing, that the man I said had made the drawing did not make the drawing.
Q. Is that the best answer you can give us, that those are the exact words?
A. As near as I can recall, yes, sir.
Q. What were the exact words that Mr. Alberts used in telling you that "Plaintiff and its agents were aware that said testimony was false"?
A. I don't remember exactly.
Q. You don't remember that?
A. No, I don't.
Q. Now, this conference that you mentioned, after
166 which Mr. Alberts told you what had been said and you told Mr. Alberts that you had testified falsely, who was present at the conference with Mr. Alberts at that time?
A. Mr. Johnson and Mr. Carlsen, myself and Mr. Alberts.
Q. Oh, that was after that conference and it wasn't a

conference where I alone was in conference with Mr. Alberts, Mr. Larson?

The Witness: What do you mean, sir? I did not understand that question?

Mr. Fidler: Q. How many conferences did Mr. Alberts have at which I was present?

A. I do not know, sir.

The Court: You mean in his presence?

The Witness: I have never been with this man in conference, Mr. Fidler.

Mr. Fidler: Q. Did Mr. Alberts tell you how many conferences that he had with me?

A. No, I don't recall that he did.

Q. Did Mr. Alberts tell you of a conference that he had with me alone and no one present except Mr. Alberts and myself?

A. Not that I recall, no.

Q. Mr. Alberts told you of a conference—or, the
167 only conference that Mr. Alberts told you about was one in which Mr. Johnson and Mr. Wacker were present, is that correct?

A. I don't know.

Q. Well, what was the conference that Mr. Alberts referred to, at which time you told Mr. Alberts that you had perjured yourself?

A. At the one where, as I said, Mr. Johnson, yourself, and Mr. Wacker was there, I don't know who else.

Q. Do you know whether Mr. Thomasma was there?

A. I was told that he was there, yes.

Q. Now, paragraph 7 b. of the Answer in Action 4382 further states in respect to Plaintiff and its agents, "and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Defendants transferred to Plaintiff the Larson application and the sum of $500, and executed the agreement, Exhibit 1." Were you ever told anything like that or so charged by Automotive or any of its agents?

A. No.

Q. How did you get your information respecting that charge?

A. Through my counsel, Mr. Hobbs.

Q. Mr. Hobbs only?

168 A. That is right.

Q. And what did Mr. Hobbs say when he so informed you?

A. He said it was a serious offense, that if we didn't sign this contract that we would be put in jail.

Q. Well, my question was with respect to the allegation that Automotive and its agents charged you with the crime of perjury and threatened to institute prosecution against you unless you transferred your Application?

A. That is right.

Q. (Continuing.) —and paid the sum of $500 and executed the agreement?

A. That is right.

Q. Now, who told you that Automotive and its agents so charged you and threatened you?

A. Mr. Hobbs.

Q. And what were his exact words, as near as you can remember it, when he told you that?

A. He said that if we didn't sign this contract and make this settlement that you were to turn loose the dogs and I would go to jail. As near as I can recall, those are the exact words that he used.

Q. And that is the basis of your statement that you were charged with perjury and threatened with prosecution?

169 A. That is right.

Q. Now, did Mr. Hobbs tell you who it was that was going to turn loose the dogs of war?

A. Yes.

Q. Who did Mr. Hobbs mention?

A. Mr. Fidler.

Q. Anyone else?

A. Not that I recall, no.

Q. Now, did you admit to Mr. Alberts that you had committed perjury, before Mr. Hobbs was retained as your attorney?

A. Yes.

Q. You did?

A. Yes, sir.

Q. Do you remember how long before?

A. The same day that Mr. Hobbs was retained as our attorney.

Q. That was the same day of the conference, then, between Mr. Alberts, Mr. Johnson, Mr. Wacker and myself and possibly others?

A. I do not remember exactly. It was either the same day or the next day.

Q. Who represented you as attorney in Interference No. 77,565?

A. Mr. Alberts.

170 Q. And how long did Mr. Alberts continue to represent you as attorney in that Interference?

A. Until the time of the conference in your office when he said that there had been false testimony.

Q. And who, then, was retained to represent you?

A. Mr. Hobbs.

Q. Did you tell Mr. Alberts and Mr. Hobbs at the same time, that you had committed perjury, or at separate times?

A. At separate times.

Q. Who did you tell, first?

A. Mr. Alberts.

Q. Now, you know Mr. Joe Johnson, president of, or one of the officers at least, or Snap-On Tools Corporation, do you not?

A. Yes, sir.

Q. Did you tell Mr. Johnson that, that you had committed perjury?

A. At the same time that I told Mr. Alberts. They were both in the office together.

Q. Now, let's see, had they just come from a conference in my office with Mr. Wacker, at that time?

A. As I was told, yes.

Q. Now further referring to paragraph 7 b. of the 171 Answer in Action 4382, it is stated: "and Plaintiff promised to withhold its complaint and suppress the evidence of said perjury if the Larson application and the sum of $500 were transferred to Plaintiff and Defendants executed the agreement, Exhibit 1;" Automotive made no such promise to you personally, did it?

A. No, sir.

Q. How do you know that any such thing was promised or how can you say it?

A. Mr. Hobbs told me that if we would sign this agreement, all evidence, all documents, everything that had transpired or had transpired before that would be burned, there would be one big bonfire and they would be burned.

Q. Mr. Hobbs told you that?

A. Yes, sir.

Q. That is Mr. M. K. Hobbs of the firm of Haight, Goldstein & Hobbs?

A. That is right.

Q. You are sure of that?

A. Yes, sir, I am positive of that, sir, and as I understand, the bonfire had been held. I guess it hasn't.

Q. Did Mr. Hobbs tell you the basis of that statement?

A. Yes, sir.

172 Q. What was the basis?

A. If we would sign this contract.

Q. That Automotive would withhold its complaint and suppress the evidence?

A. That is right.

Q. If you would sign the contract?

A. Yes, sir.

Q. Sign the contract—

A. That is right.

Q. (Continuing:) —which is Exhibit 1 attached to the Complaint in Action 4382?

A. That is right.

Q. And who told Mr. Hobbs that?

A. I don't know. As I recall, I think he said that you had or Mr. Lindsey, I don't know for sure, but no doubt Mr. Hobbs could testify as to that.

Q. Now, Mr. Larson, did Mr. Ooms get the information contained in Paragraph 7 b. of the Answer in Action 4382 from you or from Mr. Hobbs?

A. From both.

Q. You know that of your own knowledge?

A. Yes.

Q. How did he secure that information?

A. I think you better ask Mr. Ooms. I don't know exactly. I told him my share of it and I am sure Mr. Hobbs has told him his.

173 Q. Were you present when Mr. Hobbs gave the information to Mr. Ooms?

A. No. I wasn't.

Q. Were you told by anyone what the information was that Mr. Hobbs had given to Mr. Ooms?

A. I knew what the information was, yes.

Q. Well, were you told by anyone what the information was that Mr. Hobbs gave to Mr. Ooms?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Now, paragraph 7 b. of the Answer in Action 4382

further states, "and plaintiff did thereafter suppress the evidence of said perjury and withhold making its complaint to the proper officers." Do you know that to be a fact?

A. Yes, that is a fact.

Q. What is the basis of your statement?

A. That nothing has ever been done up to this time.

Q. Well, what was done in respect to suppression of evidence, by anybody?

A. What do you mean?

Q. Well, the answer says that "plaintiff did thereafter suppress the evidence of said perjury".

A. That is right. There was a settlement made, a contract signed between the two parties.

174 Q. Oh, that is what you mean by the suppression of the evidence, is that correct?

A. As I understood it, yes.

Q. Now, that agreement which is Exhibit 1 in Action 4382, you accepted that in good faith, did you not?

A. To the extent that it was sign it or else, yes.

Q. Well, you went ahead and operated under the agreement, didn't you?

A. That is right.

Q. And you sold 6,000 wrenches under the agreement, didn't you?

A. That is right.

Q. And you operated under it in good faith to that extent, didn't you?

A. That is right.

Q. And the only time you made any complaint respecting it was in connection with these suits?

A. That is right.

Q. Isn't that correct?

A. That is right.

Q. Now, by whom were you represented in the negotiations leading up to the agreement, Exhibit 1 attached to the Complaint in Action 4382?

A. Mr. Hobbs.

Q. And by Mr. Hobbs only?

A. Yes, sir.

175 Q. Mr. Alberts had nothing to do with it?

A. Nothing to do with the decision or myself, no.

Q. Now, it is a fact, is it not, that all of the contacts

made with Automobile or its agents on your behalf were made by Mr. Hobbs?

A. By Mr. Hobbs, that is right.

Q. And all of the contacts on your behalf in connection with the settlement agreement were made by Mr. Hobbs, is that correct?

A. On my behalf, that is right.

Q. Now, as I understand your testimony, Mr. Hobbs did tell you that Automotive and its agents charged you with the crime of perjury and threatened to institute prosecution against you unless you did certain things?

A. Yes, sir; to the extent that Mr. Hobbs wanted to withdraw as my attorney unless I would sign the contract.

Q. When was that?

A. I don't know the exact date, but I believe it can be produced here in letters, evidence.

Q. Well, did Mr. Hobbs think that the contract was fair that you entered into, the settlement contract?

Mr. Ooms: I object to it. He can't possibly know what Mr. Hobbs thought about it.

Mr. Lindsey: Ask him if Mr. Hobbs told him.

176 Mr. Fidler: Q. Were you advised by Mr. Hobbs that that contract was fair?

A. Yes, he said it would be better to sign the contract than go to jail.

Q. Did Mr. Hobbs tell you that the contract that you signed in settlement of the Interference No. 77,565 was a fair contract?

A. I answered that. I said that—

Q. Well, answer yes or no. Did he tell you that?

A. Yes, sir.

Q. He did— Is Mr. Hobbs still your attorney?

A. No.

Q. When did he cease to be your attorney?

A. As soon as this settlement was made.

Q. Now, I call your attention to paragraph 30 of the Third Amended Petition in the Snap-On case and ask you to read the part thereof from the beginning down to the parenthetical part, "Chap. 38, Ill. Rev. Stat., sec. 473", and I ask you—

The Court: Well, give him the papers, if you want him to read from them.

Mr. Fidler: I am sorry. I thought you had it.

The Witness: No. I had this—

(Mr. Fidler hands paper to the witness.)

Mr. Freeman: That is the pleading put in by Snap-
177 On, and I am not too sure with respect to it, but I don't think he should be examined with regard to the pleadings put in by Snap-On.

The Court: Why not?

Mr. Fidler: The cases are consolidated and this witness is directly pleaded as a perjurer.

Mr. Freeman: Well, we have no objection to the witness telling all he knows about it. Go right ahead.

Mr. Fidler: I will ask you—

The Court: Wait a minute. See if he has finished reading it.

The Witness: What shall I read here?

The Court: The entire first paragraph,—the first six paragraphs.

Mr. Fidler: The first six paragraphs.

The Witness: Is there any question, sir?

Mr. Fidler: Q. You have just read the parts—

A. That is right, yes, sir.

Q. —that I referred to?

A. That is right.

Q. Now, did you approve the inclusion of those statements in that petition?

A. Yes.

Q. With whom did you discuss that matter, in so approving the inclusion of those statements?

178 A. My counsel, Mr. Ooms.

Q. Did you discuss it with Mr Alberts?

A. With Mr. Alberts and Mr. Freeman, yes, sir.

Q. And I understand your testimony to be that you first made known the facts there alleged in the first part of paragraph 30 of the Third Amended Petition to Mr. Alberts on the day or the day after the conference at my office between Mr. Alberts, Mr. Johnson, Mr. Wacker, myself and possibly others?

A. That is right.

Q. Will you please give the exact words, as near as you can, used by Mr. Alberts in informing you of the conference that had taken place at that time at my office? I am talking about the conference now at which time Mr. Johnson and Mr. Wacker were present.

A. Mr. Carlsen, who was the Secretary-Treasurer of the Precision Instrument Manufacturing Company, and

myself were called to Mr. Alberts office and there he told us what had happened at your office. He said that there was—he had read a good sized affidavit from Mr. Thomasma saying that he had made the drawing, and other things, and what did I have to say about it? And I said, "Yes", that that was true.

Q. What else did Mr. Alberts say?

A. He said at the time that he would have to withdraw as counsel in the case, that I would have to get a lawyer of my own and he suggested several names and submitted them, and I picked Mr. Hobbs out and we went to see him.

Q. And that is all he said in telling you about that conference with Mr. Johnson and Mr. Wacker and myself?

A. As near as I recall, yes.

Q. What did Mr. Johnson say about the conferences?

A. As I recall, he did not have much to say.

Q. Did he make any comments?

A. Not that I remember, no.

Q. What did he have to say when you told him that your testimony was false and knowingly so?

A. I left shortly after that, sir.

Q. He didn't say anything?

A. Not that I remember, no.

Q. Now, after Mr. Alberts said that you had better get another lawyer, did he have anything to say, anything further to say?

A. Not that I remember, no.

Q. And from that time on you were represented solely by Mr. Hobbs?

A. That is right.

Q. And not by Mr. Alberts?

A. That is right.

180 Q. Now, you have said that Mr. Alberts told you what happened at that conference at my office, at which time Mr. Joe Johnson and Mr. Wacker were present. Now, what was it that Mr. Alberts said that happened?

A. Why don't you ask Mr. Alberts? I can remember all the things that were said, sir.

Q. Well, tell us the best you remember?

A. Simply that there was false testimony given, that you had brought this up to them and they said "How about it?"

Q. Who said there was false testimony given?

A. Mr. Alberts told me that.

Q. And what was the basis of Mr. Alberts' statement to you?

A. What had been said at your office and the testimony that had been given by George Thomasma.

Q. You mean that Mr. Alberts told you that on that day he read the statement that had been made by Thomasma?

A. I don't recall it.

Q. But he did tell you he heard Thomasma make a statement orally in the presence of Mr. Alberts and Mr. Joe Johnson, didn't he?

A. I don't remember.

Q. You don't remember?

A. I do not.

181 Q. Well then, what was the basis of that statement that Mr. Alberts made, wasn't it what he had heard Thomasma say?

A. As I recall, it was, but I do not remember it definitely, sir.

Q. Now, Mr. Alberts hasn't represented you as attorney since that day in my office when the conference between him and Mr. Johnson took place, has he?

A. In that Interference case of any kind, no.

Q. In any capacity?

A. As a patent attorney, yes.

Q. He has?

A. Yes.

Q. Oh, he never did cease representing you?

A. Oh, yes.

Q. Well, how long did he stop representing you?

A. I don't know exactly.

Q. Well, give us an idea?

A. There have been other patents that I have applied for since that, that he has taken care of for me.

Q. Well, give us an idea as to what time, that he ceased representing you?

A. I would say several months.

Q. Well, how many months?

A. I don't know exactly.

Q. Three months?

A. I don't know.

182 Q. You don't know?

A. No.

Q. During what period of time was it?

A. During the winter time.

Q. Well, was it during the period of those negotiations with respect to the agreement?

A. I said that when I told him that there had been false testimony given he was not my attorney then until after the agreements were all settled.

Q. Oh, then he became your attorney again?

A. Not immediately, no, sir.

Q. Well, how long after?

A. I don't know exactly. No doubt his records will show exactly when it was started again.

Q. And what was the occasion of him resuming as your attorney?

A. New patents.

Q. Oh, new Applications for patents?

A. That is right.

Q. And he has represented you continuously since that time?

A. On patent applications, yes, sir.

Q. And has he represented Precision, also?

A. Not to my knowledge, no.

Q. Oh, it has been you personally?

A. That is right.

Q. And not Precision?

183 A. That is right.

Q. Now referring back to paragraph 7 b. of your Answer in Action 4382, the first part which I previously quoted refers to the testimony of several witnesses taken under oath on your behalf in the Interference?

A. Yes.

Q. Now, those several witnesses were Walter A. Carlsen, C. C. Whitaker, L. Hymes, Richard Berggren, Henry C. Schultz, William Ladéndorf, Harold Blake and Ronald C. Ford, isn't that correct?

A. That is right.

Q. Who prepared the Preliminary Statement for you in the Interference No. 77,565?

A. Mr. Alberts.

Q. And was that statement based upon what your corroborating witnesses were going to say?

A. That is right.

Q. You had talked to those witnesses, including Mr. Carlsen and others above-mentioned, before you filed your preliminary statement?

A. That is right.
Q. Did Mr. Alberts talk to them, too?
A. No, sir.
Q. Did you talk to Mr. Alberts about your preliminary statement before you filed it?
184 A. Yes, sir.
Q. And what information did you give Mr. Alberts in that respect?
A. Simply as stated there.
Q. As stated in your Preliminary Statement?—
A. That is right.
Q. —filed in the Interference?
A. That is right.
Q. Did you tell Mr. Alberts that you had talked to your corroborating witnesses, at the time that you gave him that information?
A. I did.
Q. Did you tell Mr. Alberts at the time who those corroborating witnesses were?
A. I do not remember. I might have and then I might not—I do not remember exactly.
Q. Did you tell him that Mr. Carlsen was going to be one of them?
A. I don't recall.
Q. You don't recall. Did you tell him that Mr. Ford was going to be one of them?
A. I don't recall, sir.
Q. Did you tell him that Mr. Schultz was going to be one of them?
A. Not that I remember.
185 Q. Who made the decision as to the dates to be set up in your Preliminary Statement?
A. Mr. Thomasma made several of them.
Q. Mr. Thomasma?
A. That is right.
Q. Anyone else?
A. Mostly Mr. Thomasma.
Q. You didn't have anything to do with it?
A. A couple of them, yes.
Q. What dates did you have to do with?
A. The date on the drawing,—
Q. What other date?
A. (Continuing.) —which I was told by Mr. Thomasma was plenty far enough back.

Q. Oh— Now, who was Mr. Thomasma?
A. He was a man who had done some work for me.
Q. He was also an employe of Automotive Maintenance Machinery Co., was he not?
A. Yes, he was.
Q. And you knew that, didn't you?
A. I did.
Q. And you knew that you and Mr. Thomasma worked on the wrench at a time when he was still working for Automotive, did you not?
186 A. That is right.
Q. And you knew, at the time you incorporated Precision Instrument Manufacturing Company, that Mr. Thomasma was one of the employees of Automotive at that time, didn't you?
A. That is right.
Q. And you knew that Mr. Thomasma was one of the incorporators of Precision?
A. Yes, sir.
Q. And one of the officers of Precision?
A. That is right.
Q. And after Precision was formed as a corporation, Mr. Thomasma continued to work for Automotive, didn't he?
A. That is right.
Q. And you knew that Mr. Thomasma had worked at Automotive in connection with the development of this torque wrench, didn't you?
A. I did not.
Q. You did not?
A. I did not.
Q. What did he tell you was the basis of his information?
A. That he had an idea.
Q. That he had an idea?
A. That is right.
Q. Automotive was supplying wrenches to Snap-On at onetime, weren't they?
A. Yes.
187 Q. And that was back in 1937, wasn't it?
A. I believe it was.
Q. And Thomasma knew about that, didn't he?
A. No doubt.
Q. That is, George B. Thomasma?

A. That is right.

Q. Well, didn't he tell you that he knew about it?

A. Yes, I believe he did.

Q. Now, at the time you prepared your Preliminary Statement, you knew the construction of Automotive's wrench that they were supplying to Snap-On at that time, didn't you?

A. Yes, I did.

Q. And where did you get that information?

A. From a wrench.

Q. And where did you get that wrench?

A. From Mr. Thomasma.

Q. You didn't get anything from Snap-On on that?

A. No.

Q. And where did Mr. Thomasma get the wrench?

A. I don't know.

Q. And did Mr. Alberts see that wrench when the Preliminary Statement was filed?

A. Which wrench?

188 Q. That Thomasma gave you, of Automotive's?

A. No, sir.

Q. Mr. Alberts never saw that wrench?

A. No.

Q. Now, when you filed your Application involved in the Interference back in October, 1938, were you familiar with the wrench that Automotive was supplying to Snap-On at that time?

A. Yes, sir.

Q. And how long had you known about that wrench?

A. I do not remember exactly. A short time.

Q. Well, pretty close to a year, wasn't it?

A. No.

Q. Well, when you first met Thomasma you learned about it, didn't you?

A. No.

Q. Now, how long before you filed your Application did you contact Snap-On in an attempt to sell your wrench to them?

The Witness: Say that again—

Mr. Fidler: Q. How long before you filed your Application did you contact Snap-On in an attempt to sell your wrench to them?

The Witness: When was the Application filed?

Mr. Fidler: In October, 1938, October 11th I believe.

189 A. I believe it was in April or the early part of May that I contacted them the first time.

Q. And at that time Automotive was supplying its wrench to Snap-On?

A. Yes, that is right.

Q. And at that time Thomasma was working with you in connection with your wrench?

A. That is right.

Q. And trying to interest Snap-On in it?

A. He was trying to interest Snap-On?

Q. Yes.

A. No.

Q. Who tried to interest Snap-On?

A. I did.

Q. You alone?

A. Me alone.

Q. And do you know about Mr. Thomasma ever having gone to Snap-On in connection with Automotive wrenches?

A. Not that I recall. I believe that—yes, I do too. He said that he had gone up there on some wrenches that were defective and he had to do some repairing on them.

Q. Was there any time that you were ever in Automotive's plant at night with Thomasma?

A. Yes, I was.

Q. And what was the occasion of that?

A. I bought a piece of machinery from them and I

190 wanted some oversize equipment for it, and I was as far as the shipping room, and I believe there is a building in the back that was a boiler room or something, and these things were picked up out of the corner in a store room there, as I recall, and I paid for them.

Q. When was that?

A. Either during 1936 or 1937. I don't know exactly.

Q. How long had you known George B. Thomasma?

A. I got acquainted with him, as I recall, in about 1935 or 1936.

Q. What was the occasion of that?

A. I bought a pin hole boring machine from him that was manufactured by the Automotive Maintenance Machinery Company and he said that it was a very high grade tool, which we found out was very much the opposite. We had considerable trouble with it and it was taken back

several times for correction, and it never turned out extra satisfactorily.

Q. Now, at the time you filed your Application involved in the Interference, was Mr. Carlsen associated with you?

A. Yes.

Q. That is, Walter Carlsen?

A. Yes.

Q. (Continuing.) One of your corroborating witnesses?

191 A. That is right.

Q. Now, you knew at the time that you filed your Application that you were going to supply your wrenches to Snap-On, did you not?

A. That is right.

Q. And up to that time, Snap-On had been taking Automotive's torque wrenches of similar kind, isn't that correct?

A. That is right.

Q. Who was attorney for Snap-On at that time?

A. Mr. Alberts.

Q. That is, Mr. Harry C. Alberts?

A. That is right.

Q. And did he know those facts, too, about your going to supply to Snap-On your wrench?

A. Yes, sir.

Q. And did he know, also, that Automotive was supplying its wrench to Snap-On?

A. I imagine he did.

Q. Well, in that connection, did you ever see any Automotive wrenches in Mr. Alberts' office?

A. No.

Q. Now, you entered into a contract with Snap-On, personally, you did?

A. Yes, sir.

192 Q. (Continuing:) On September 28th, 1938, which contract is attached to the Third Amended Petition as Exhibit 5, I ask you whether or not this is a copy of the contract just referred to? (Mr. Fidler hands document to the witness.)

Mr. Alberts: May I have a copy?

(Mr. Fidler hands document to Mr. Alberts.)

A. Yes, that is right.

Mr. Fidler: Q. Who prepared that contract?

A. Mr. Alberts.

Q. That is, Mr. Harry C. Alberts?
A. Harry C. Alberts.
Q. (Continuing.) Attorney for Snap-On?
A. Yes, sir.
Q. Now, the contract, Exhibit 5, just referred to, provides for a defense or litigation fund?
A. That is right, yes, sir.
Q. Doesn't it?
A. Yes, sir.
Q. Why was that?
A. Because I was a poor man and I had absolutely no funds whatever. I had spent considerable time working on this tool and I wanted to manufacture it myself rather than turn it over to them on a royalty basis, or manufacture it for them in their plant.
Q. Why were you thinking about a defense fund
193 at that time?
A. Because that was set up in there by Mr. Alberts and said that was necessary.
Q. Well, why did Mr. Alberts want that in there?
A. Because it was a Patent Application and not a patent.
Q. Well, did Automotive have anything to do with that?
A. Not that I know of, no.
Q. Well, weren't you afraid that Automotive might take some action in respect to the wrench, for infringement, for some patents that they might get?
A. No.
Q. You had no idea of that?
A. No.
Q. Even though the wrench was of the same type of wrench as Automotive's?
A. I did not consider that it was of the same type.
Q. You did not?
A. No, sir.
Q. You thought it was a different type?
A. Yes, sir.
Q. How was it different?
A. Because it was constructed entirely different.
Q. Wasn't the only real difference a tail piece on the end of the spring bar for actuating the gauge?
A. In so far as the patent wording is concerned, yes, but as far as the actual manufacture of the wrench is
194 concerned it was entirely different.
Q. But in so far as the principle of operation and

the mechanics of the thing, your wrench was the same as Automotive's except for that tail piece, isn't that correct?

A. It was declared that in the Interference, as I understand.

Q. Now, when you filed your Application, all of the claims in it were limited to that tail piece, were they not?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. Do you know that every claim in that Application filed was so limited and didn't cover the Automotive wrench?

A. I don't know.

Q. You don't know?

A. No, sir. I am not a patent attorney.

Q. Well, did you discuss the claims of your Application with Mr. Alberts at the time that your Application was filed?

A. As I recall, I did, yes.

Q. Did he tell you what they meant?

A. Roughly, yes.

Q. And did he explain to you that they were limited to that tail piece on the end of the spring bar for actuat-
195 ing the mechanism?

A. Not that I recall.

Q. Did he explain to you that one of them read on the Automotive wrench that Automotive was supplying to Snap-On at that time?

A. Not that I remember.

Q. You don't remember?

A. No.

Q. Did you see a copy of Zimmerman's Preliminary Statement in the Interference before you started to take testimony?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Did you ever see a copy of Zimmerman's Preliminary Statement?

A. I don't remember that I ever did, no.

Q. Where did you get your information as to the time you would have to go back to, to beat Zimmerman.

A. From Mr. Thomasma.

Q. From Mr. Thomasma?

A. That is right.

Q. Well, how did he know?

A. When we told him that there was an Interference, then he gave us considerable information on it and, in fact, as I recall it, it was before that, that he seemed to have considerable information.

196 Q. Then, he did give you some information about the development of Automotive's wrench, did he?

A. Yes.

Q. Sufficient for you to prepare a Preliminary Statement in the Interference?

A. That is right.

Q. To beat Zimmerman?

A. That is right.

Q. And he gave it to you and Mr. Alberts, did he?

A. No, sir. To me.

Q. To you only?

A. He had never met Mr. Alberts or knew anything about him.

Q. Never?

A. Mr. Alberts did not know anything about him, I should say.

Q. Well, did you pass the information on to Mr. Alberts after it was given to you by Mr. Thomasma?

A. That is right.

Q. And did you tell Mr. Alberts where you got your information?

A. No, sir.

Q. Now, have you produced here a drawing about which you testified in the Interference as having been made in 1936?

The Witness: Here in court, you mean?

Mr. Fidler: Q. Yes. If so, will you please produce it?

195 Mr. Ooms: I have produced it, your Honor. He has been under no order to produce it.

The Court: Now are you going into a different subject? Let us take our recess. How much longer are you going to be on this man?

Mr. Fidler: I think probably about 10 or 15 minutes.

The Court: And that will conclude?

Mr. Fidler: My direct examination.

The Court: And what other evidence or examination is there to go into?

Mr. Fidler: I haven't anything in mind at this time, except discovery with respect to this witness.

The Court: And your say you can conclude that within 10 or 15 minutes?

Mr. Fidler: I think so. Well, maybe a half hour. I wouldn't like to tie myself down definitely to the time.

The Court: And that will conclude with this man?

Mr. Fidler: In so far as the questions I have to ask.

Mr. Freeman: We have none.

The Court: If that is true, I can work until 1:00 o'clock, and let us end it. Otherwise, we will have to take a recess until next week some time. If you can finish at 1:00 o'clock, we will stay here and finish it.

Mr. Fidler: Now, you have produced a drawing which is marked Exhibit 27 in Interference No. 77,565?

198 The Witness: That is right.

Mr. Fidler: Q. And that is the drawing about which you falsely testified in the Interference?

A. That is right.

Q. And when, in fact, was this drawing made?

A. During 1938, as I recall.

Q. And who made it?

A. Mr. George B. Thomasma.

Q. And your testimony in the Interference was that who made it?

A. A high school boy.

Q. Can you produce the first wrench that you testified as having been made in 1934?

A. Yes. They are all there on the board.

Q. Will you please do so?

A. Yes.

Q. Now you have produced a board containing several wrenches?

A. That is right.

Q. Which wrench was it on here which you said was made in 1934, whereas it was made at some later time?

A. This wrench (indicating), and these two here (indicating).

Q. And those are the wrenches that are marked 199 Exhibits 7, 10 and H on the board?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. When were those wrenches made, actually?

A. During 1937.
Q. What time in 1937?
A. During the Fall of the year.
Q. What time in the Fall?
A. I do not know exactly.
Q. Who prepared this exhibit, this board of wrenches?
A. I did.
Q. By yourself?
A. Yes, sir.
Q. Did anyone offer any suggestions as to how it would be prepared?
A. Mr. Alberts said to mount them on a board, that is all.
Q. Did Mr. Alberts see the wrenches before they were mounted on the board?
A. Yes.
Q. Did he know the testimony you were going to give about them before they were mounted on the board?
A. As I recall he did, yes, sir.
Q. Now, Mr. Schultz, in testifying, produced some records respecting castings which he said were made back in 1934, is that correct?
A. That is right.
200 Q. And did you talk to Mr. Schultz before he testified?
A. Yes, I did.
Q. And did he say that those records covered castings made back in 1934?
A. That is right.
Q. And that they were wrench castings?
A. That is right.
Q. And when he told you that, did you know that it was not true?
A. I knew it, yes, sir.
Q. Did you tell him any different?
A. No.
Q. Did he know it wasn't true?
A. As I recall, he did, yes.
Q. Mr. Schultz made or his company has made practically all the castings that you have used?
A. That is right.
Q. About how many has that been altogether?
A. I don't know exactly.
Q. Now, Mr. Ford, whose name appears on this drawing as one of the witnesses who signed it—

A. Yes, sir.

Q. —I believe he testified that he signed that drawing back in May, 1936, did he not?

A. I think he did, yes, sir.

201 Q. And did you talk to him before he testified in the Interference?

A. I did, yes.

Q. And did he tell you or did you tell him that that was the date when he signed it?

A. I told him that.

Q. Well, when did he actually sign it?

A. Well, after 1938, sir, when the drawing was made.

Q. Well, was it just before he testified?

A. No, sir. It was some time before that.

Q. Well, then, you knew that testimony that Mr. Ford gave was not true?

A. Yes, I knew it was not.

Q. And did Mr. Ford know it wasn't true?

A. There is no dispute about the testimony—

Q. Well, did Mr. Ford know that that testimony wasn't true?

A. Yes.

Q. When he gave it?

A. As I recall it, yes.

Q. How about Mr. Carlsen? He testified too?

A. Yes.

Q. He testified, did he not, about the making of wrenches back in 1934, 1935 and 1936?

A. That is right.

202 Q. And did you talk to him about that testimony before he testified?

A. Yes, sir.

Q. And did he tell you about the making of wrenches, at that time, in 1934, 1935 and in 1936?

A. No. I told him.

Q. You told him?

A. That is right.

Q. When did you first meet Mr. Carlsen?

A. About 1934, 1933 or 1934.

Q. That is when you first met him?

A. Oh yes.

Q. You are sure it wasn't in 1938?

A. Oh no.

Q. When Mr. Carlsen testified in the Interference that he saw the wrenches back in 1934, 1935 and 1936—

A. Yes.
Q. —did he know that that testimony wasn't true?
A. Yes.
Q. You knew it wasn't true, didn't you?
A. Yes, I knew it wasn't true.
Q. Did he knowingly testify as to those untrue facts?
A. Maybe you better ask him.
Q. Well, do you know?
203 A. I know that he knew, yes.
Q. Is that also true of Mr. Schultz?
A. Yes.
Q. Is that also true of Mr. Ford?
A. Yes.
Q. Is that true of all of the witnesses that testified on your behalf in the Interference?
A. No.
Q. It wasn't true of Mr. Ladendorf, was it?
A. No.
Q. Anyone else it wasn't true of?
A. Or Mr. Blake either.
Q. Mr. Blake?
A. That is right.
Q. Well, why wasn't it true of Mr. Ladendorf?
A. Because the wrench had been sold to him and he had the purchase there of when it was sold. That is all he said.
Q. That is all he testified?
A. Yes.
Q. How about Mr. Blake?
A. The same thing.
Q. Did Mr. Alberts talk to these witnesses before they were put on the stand?
A. I don't remember.
Q. You don't know?
204 A. No, I don't, sir.
Q. Well, how did Mr. Alberts know what the witnesses were going to testify about?
A. He didn't.
Q. Well, he examined them, didn't he?
A. Not that I remember.
Q. Well, who examined you in giving testimony in the Interference?
A. You did.
Q. Oh, I did?

A. That is right.
Q. Mr. Alberts didn't?
A. Yes. He asked some questions, as I recall. Yes, he did.
Q. Well, who examined Mr. Carlsen, besides me?
A. In the office, the day the testimony was given?
Q. Yes, when the testimony was being taken?
A. Mr. Alberts and yourself.
Q. And is that true of all of the witnesses?
A. Yes, it is.
Q. Well, where did Mr. Alberts get his information to examine those witnesses?
The Witness: I don't understand the question, sir?
Mr. Fidler: Q. Well, how did he know how to pro-
205 ceed with the examination? Did he have any ideas as to what they would testify?
A. Simply what I had told him.
Q. Oh, what you had told him?
A. That is right.
Q. And nothing else?
A. No.
Q. Did you have anything to do with the reporter's books that have been destroyed?
A. No, sir.
Q. Did you ever see that reporter after the taking of your testimony?
A. No, sir.
Q. Did you ever discuss anything with anyone about it, after the taking of your testimony?
A. No, sir.
Mr. Fidler: Those are all the questions I have, your Honor.
Mr. Freeman: No cross examination.
206 There is no ruling on this. All you wanted to do was to have this testimony taken?
Mr. Lindsey: That is right, and we wanted your Honor to preserve the testimony in the event your Honor wanted to take any action in the matter from a criminal standpoint. Of course, this man has committed perjury, and that is a violation of the criminal statutes not only of the Federal statute but of the Illinois statute. He stands here as a confessed perjurer. He has taken the stand.
The Court: Well, if I took any action as a court, I

would refer the transcript to the District Attorney and let him look into it.

Mr. Lindsey: That is correct, your Honor.

The Court: I am not going to pick out any individual here. I am not sitting as an Examining Magistrate, but, if I did anything, that is what I would do.

Deposition of Walter Carlsen taken in the above-entitled cause by the Automotive Maintenance Machinery Co., before Thomas B. Goodwill, a Notary Public of Cook County, Illinois, on Tuesday, April 13, 1943, at Suite 1400 Field Building, 135 South LaSalle Street, Chicago, Illinois, pursuant to Notice and proof of service shown thereon:

209 State of Illinois }
County of Cook } ss.

WALTER CARLSEN, called as a witness herein by the Automotive Maintenance Machinery Co., Plaintiff, being first duly sworn by the Notary Public, was examined and testified as follows:

Examination by Mr. Fidler.

Q. Will you please state your name?
A. Walter Carlsen.
Q. And your age?
A. 51.
Q. And your residence?
A. 660 Person Street, Des Plaines, Illinois.
Q. And your occupation?
A. What do they call it—a manufacturer.
Q. What company are you connected with?
A. Precision Instrument Manufacturing Company.
Q. In what capacity?
A. Secretary-Treasurer.
Q. How long have you been Secretary and Treasurer of that company?
A. Since December, 1938.
Q. Did you have anything to do with the incorporation of Precision Instrument Manufacturing Company?
A. Yes, sir, I did.
Q. What was that? What did you have to do with the incorporation of that company?

210 A. I collected the funds to get the company organized.

Q. And when was that?

A. During November and part of December, of 1938. I think those are the right months. It may have been a month before then.

Q. Do you know Kenneth R. Larson?

A. Yes, I do.

Q. How long have you known Mr. Larson?

A. Since either October, 1938, or November. I don't know which month it was.

Mr. Ooms: Q. What year was that?

A. 1938.

Mr. Fidler. Q. Under what circumstances did you come to know him?

A. He was in the automobile parts business just about half block or a block away. It was on the same street. I had gone in there several times for some parts.

Q. Do you know George B. Thomasma?

A. I do.

Q. Did Mr. Thomasma have anything to do with the meeting between you and Mr. Larson?

211 A. No. I had met Mr. Larson about twice before; I met him through Thomasma. I met him formally through Thomasma.

Q. What were the circumstances under which you undertook to get together the funds for Precision Instrument Manufacturing Company?

A. Thomasma and Larson had invented a wrench and they didn't know how to market it, so they came and asked me. First Mrs. Thomasma approached my wife, and she said to send her husband over to see me, that I could probably do something about it, and so he came over to see me one evening and he took me over to Larson's house and we talked it over there.

Q. At that time do you know whether or not any connection had been made with the Snap-On Tools Corporation, by Mr. Larson?

A. Up until that time I did not know, no.

Q. When did you first know that Mr. Larson was dealing with Snap-On Tools Corporation?

A. About the middle of December.

Mr. Freeman: Q. Of what year?

A. 1938.

Mr. Fidler: Q. Are you familiar with the Interference proceeding No. 77,565, in which an Application of Mr. Larson was involved with an Application of Mr. Her-
212 man W. Zimmerman?

A. Yes.

Q. When did you first hear of that Interference?

A. I do not remember the exact date.

Q. Was it about the date that the interference was declared?

A. Yes.

Q. How did you first come to hear about it?

A. I believe we had a notice of interference.

Q. From the United States Patent Office?

A. I think so.

Q. And when you got that notice of interference, what did you do?

A. I didn't do anything.

Q. Did you discuss it with Mr. Larson?

A. Not at the time, no.

Q. Do you know whether Mr. Larson did anything with it?

A. I think he took it down to see Mr. Alberts.

Q. You didn't go along?

A. No.

Q. Do you recollect that Mr. Larson had to prepare and file a paper called a Preliminary Statement?

A. No.

Q. Do you know whether or not Mr. Larson filed any paper in the Interference, in which he set forth the dates when he did certain things with respect to his in-
213 vention?

A. No, I don't

Q. Did you help Mr. Larson prepare any papers to be filed in the Interference?

A. No.

Q. Did anyone help Mr. Larson prepare any such papers in the Interference?

A. That I do not know.

Q. You testified as a witness on behalf of Mr. Larson in that Interference No. 77,565, did you not?

A. I did.

Q. When did you first know that you would be a witness in that Interference?

A. At the time just before the depositions were to be taken.

Q. And under what circumstances did you come to know that fact?

A. By just discussing it with Mr. Larson.

Q. What was said by Mr. Larson and you, during that discussion?

A. That has been so long ago, it is pretty hard to remember.

Q. Well, did you discuss what you were going to testify to in the Interference?

A. Not at that time, no.

214 Q. Did you ever discuss that with Mr. Larson, that is, what you were going to testify to in the Interference?

A. Yes, yes.

Q. And when did you discuss that with Mr Larson?

A. About a day or two before the deposition was taken.

Q. And at that time what did you discuss with Mr. Larson respecting your testimony?

A. Oh, just about the dates of the wrench, and so on, and so forth.

Q. Did Mr. Larson have any paper or anything that he had filed in the Interference, before him at the time he discussed that matter with you?

A. No.

Q. When you and Mr. Larson discussed the testimony you were to give, was anyone else present?

A. No.

Q. Was the testimony that you actually gave in the Interference discussed at that meeting or conference with Mr. Larson respecting the testimony?

A. Yes.

Q. And did you have any written memorandum of any kind—

A. No.

Q. —at that time?

A. No.

Q. Did Mr. Larson tell you at that time the dates
215 that he had to prove in the Interference?

A. Yes.

Q. And had you any idea as to those dates prior to that time?

A. No.

Q. Did you tell Mr. Larson at that meeting two or three days before you testified, what you would testify to in the Interference?

A. Did I tell Mr. Larson?.
Q. Yes.
A. I told him I would testify to the things that we had discussed, yes.
Q. What were those things that you discussed?
A. I can't recall them now. They were mostly in regard to dates.
Q. Well, where did you get your basis for the testimony that you told Mr. Larson you would give?
A. From the discussions that Mr. Larson and I had.
Q. From the fact that Mr. Larson told you what dates he had to prove in the Interference?
A. That is right.
Q. Now, I believe that you testified in the Interference to the effect that you saw a wrench that Mr. Larson had in 1934 and that you happened to see that wrench in connection with some repair work that Mr. Larson did on your car, a car that you were using in connection with a
216 pickle patch that you were operating?.
A. That is right.
Q. Was that testimony true?
A. No.
Q. Did you know that it was not true?
A. Yes.
Q. At the time you gave it?
A. I did.
Q. Why did you give such testimony?
A. Well, because it was best for our company, we were just a small place and we were kind of in a spot, we would lose everything if we just hadn't manufactured something. We didn't know at the time what the consequences would be.
Q. Did you tell Mr. Larson you were going to so testify, during that meeting two or three days before you did testify?
A. I did.
Q. What did he say about that?
A. We had discussed it pro and con and felt like that is what we should say.
Q. I believe you also testified to having seen wrenches that Mr. Larson had during the years 1935 and 1936; was that testimony true?
A. No.
217 Q. Did you know that it wasn't true, when you gave it?

A. I did.

Q. And you gave that testimony which was not true, for the same reasons that you gave the testimony respecting the 1934 wrench?

A. That is right.

Q. When did you first see a wrench that Mr. Larson has worked out?

A. I believe it was in November, 1938.

Q. Was that before or after the time that you started getting together the money for the Company?

A. Before. I can't be positive of those dates, but it was in about that time somewhere.

Q. Well, did Mr. Larson have an agreement at that time with Snap-On Tools Corporation?

A. I did not see that agreement until past the middle of December; in fact, I didn't see the agreement. He just told me that he had one.

Q. Do you recollect whether or not you ever saw a letter that was written by Mr. Myers of the Snap-On Tools Corporation to Mr. Larson, stating or confirming the fact that they were giving Precision Instrument Manufacturing—giving to Mr. Larson an order for a certain number of wrenches?

A. Yes.

218 Q. Did you see that letter about the time it was received, or later?

A. I do not remember when it was received, but I had that letter in my possession shortly after I started getting the money together for the Precision Instrument.

Q. Do you know the purpose in writing that letter?

A. I do not.

Q. What did you use it for?

A. I used in to convince the people that we were trying to sell stock to that we had orders for the tools.

Q. Did it serve its purpose?

A. It did.

Q. Now, do you recollect that several other witnesses besides yourself and Mr. Larson testified on behalf of Mr. Larson in Interference No. 77,565?

A. Yes, I do.

Q. Did you talk to any of those witnesses before they testified?

A. No.

Q. Did you hear the testimony of any of those witnesses?

A. No.

Q. Were you at the office of Mr. Alberts at any time during the taking of the testimony of those other witnesses?

A. I was.

219 Q. Where were you in that office?

A. Mostly in the hall, outside of the office.

Q. And why were you there?

A. They were supposed to take my testimony that day.

Q. You say you were mostly in the hall. Where were you the remainder of the time?

A. In the office.

Q. What part of the office?

A. The outer office.

Q. Next to the room where the testimony was being taken?

A. Yes.

Q. How much of the time during the taking of that testimony were you present?

A. I think it was one full day.

Q. Just before you testified?

A. Yes.

Q. Were you present while Mr. Larson was testifying?

A. No.

Q. Were you present in Mr. Alberts' office while Mr. Schultz was testifying?

A. No.

Q. Were you present in Mr. Alberts' office while Mr. Ford was testifying?

A. Yes.

Q. Did you hear his testimony?

220 A. No.

Q. Did you hear any part of his testimony?

A. Oh, a word here and there.

Q. Did you know what Mr. Ford was testifying to at that time?

A. No.

Q. Did you talk to Mr. Ford before he testified?

A. No.

Q. Did you talk to Mr. Schultz before he testified?

A. No.

Q. What was the name of Mr. Schultz's company?

A. Ravenswood Brass Foundry.

Q. And what connection, if any, did he have with Precision Instrument Manufacturing Company?

A. He was their supplier for aluminum castings.

Q. Has he always been your supplier of those castings?

A. He has.

Q. Has anyone else besides Mr. Schultz supplied any of those castings?

A. Not to any knowledge.

Q. Did you talk to Mr. Alberts before you testified?

A. The day before the testimony, I think, was begun.

Q. You mean the day before the beginning of the taking of any of the testimony?

A. That is right.

Q. And where was that?

221 A. In Mr. Alberts' office.

Q. And who was present at that time?

A. Mr. Larson, Mr. Alberts and I.

Q. At that time did you tell Mr. Alberts and Mr. Larson the testimony that you would give in the Interference?

A. I do not believe I told Mr. Alberts anything at that time. I think he was talking to Mr. Larson all the time.

Q. Did you ever talk to Mr. Alberts before you testified, as to the testimony that you were going to give in the Interference?

A. I think one morning for about 15 minutes.

Q. And when was that?

A. I can't recall. It was before the testimony was taken.

Q. The day before, or two or three?

A. I think it was the same morning, perhaps.

Q. That you testified?

A. Yes, the same morning before the taking of the testimony started.

Q. Was there any time that you and Mr. Larson talked to all of his witnesses together as a group?

A. No.

Q. Was there any time that you discussed the testimony that you were to give on the case in which you were to testify, the Interference case, at the home of Mr. Alberts?

A. No.

222 Q. Did you at any time discuss the testimony that you were going to give in the Interference, with any representative of Mr. Alberts?

A. No, sir.

Q. Did you at any time prepare any written memoranda that you handed to Mr. Alberts, as to the testimony that you would give?

A. No.

Q. Then, as I understand it, all of the contact that you had with Mr. Alberts was that 15 minutes the morning before the testimony started?

A. That is right.

Q. And how was Mr. Alberts informed as to the testimony that you were going to give?

A. I don't know.

Q. After Mr. Ford testified in Interference No. 77,565, did you talk to him about the testimony that he had given?

A. I talked with him, but I don't think it was about the testimony.

Q. When did your talk with him?

A. Shortly after he was through with his testimony.

Q. Have you talked to him since that time?

A. I saw him on several occasions, yes.

Q. What was the occasion of those talks?

A. He helped install an oil burner in our plant, 223 about eight months ago, and once before then he came out for a little visit, and I talked with him for about five minutes.

Q. Was Mr. Ford paid for that job?

A. For the oil burner? We bought the oil burner through Mr. Ford.

Q. What business is Mr. Ford in, now?

A. He is a fireman for the City of Evanston.

Q. When was the last time that you talked to Mr. Ford?

A. I would say it was seven or eight months ago, when he installed the oil burner, or perhaps once after that he stopped in, I think.

Q. You purchased that oil burner from Mr. Ford, I believe you said?

A. Through Mr. Ford.

Q. Did Mr. Ford receive any remuneration for that?

A. That I don't know. The check was made payable to the oil burner company.

Q. Did you talk with Mr. Schultz after he testified?

A. No.

Q. When was the last time that you talked to Mr. Schultz?

A. About a week ago.

Q. Did you talk to him at that time about the testimony that he had given in the Interference?

A. You mean the last week?

Q. Yes.

A. No.

224 Q. Did you ever talk to Mr. Schultz after he testified, about the testimony that he had given in the Interference?

A. No.

Q. Does Mr. Schultz own any stock in your company?

A. No.

Q. Does he have any interest in your company——

A. No.

Q. ——other than being the supplier of castings?

A. No.

Q. Does Mr. Ford own any stock in your company?

A. No.

Q. Does he have any interest in your company otherwise?

A. Only a friendly interest is all. He is a good friend of Larson's.

Q. Who was present during the 15-minute time that you discussed the testimony, that you had given in the Interference, with Mr. Alberts?

A. Mr. Larson, Mr. Alberts and I.

Q. Was that Interference No. 77,565 the first experience that you had ever had in an interference?

A. That is right.

Q. Do you know whether Mr. Larson had ever had any experience?

A. I don't believe he had.

Q. Were you advised by anyone as to what was 225 necessary to be done in the Interference?

A. No.

Q. Did Mr. Larson tell you what kind of proceeding it was and what need be done?

A. It was discussed from time to time, but I would not be able to say just what was discussed.

Q. Did Mr. Larson know that you were going to give the testimony that you gave in the Interference?

A. Yes.

Q. And did he know that that testimony was false at the time you gave it?

A. Yes.

Q. Before you testified in Interference No. 77,565, did you discuss the testimony that you were going to give, with anyone connected with the Snap-On Tools Corporation?

A. No.

Q. Did you assist Mr. Larson in any way in getting witnesses to testify in the Interference?

A. I drove along with him several times, when he went to see some of the witnesses?

Q. And who were those witnesses?

A. Mr. Ford, for one, and several times we went to see Mr. Whitaker, and he wasn't home, and I believe I was with him when he went up to see Mr. Ladendorf.

Q. Did you go with him when he went to see Mr. Schultz?

226 A. No.

Q. Were you present when Mr. Larson discussed the matter with Mr. Ford?

A. No.

Q. Where did that discussion take place?

A. At the firehouse out in Evanston. That is the only place I ever went with him—I don't know where Ford's home is.

Q. And did you stay out in the car?

A. Yes.

Q. Did Mr. Larson tell you what Mr. Ford had said?

A. I don't recall that.

Q. Did he tell you what Mr. Ford would testify to?

A. No.

Q. Did he go with Mr. Larson to see anyone about testifying, who did not testify in the Interference?

A. Yes. George Thomasma.

Q. And anyone else?

A. No.

Q. Do you know Mr. Dawson, Ed Dawson?

A. No.

Q. What was Mr. Thomasma's, that is George B. Thomasma's connection with Precision Instrument Manufacturing Company?

A. He was the vice-president.

Q. Was he one of the incorporators?

A. He was.

227 Q. Who were the other incorporators?

A. Mr. Larson and myself.

Q. What did Mr. Thomasma contribute to the company?

A. Half of what Mr. Larson was supposed to be contributing. They both contributed a like amount.

Mr. Lindsey: What was that answer?

(Answer read by the Notary.)

Mr. Fidler: Q. And did both Mr. Larson and Mr. Thomasma receive stock?

A. Yes.

Q. Did they buy that stock?

A. They got that stock for their invention and for the machinery and equipment they had.

Q. Do you recollect how many shares of stock they received?

A. 300 shares each.

Q. How many shares of stock did you receive in the company?

A. I received 40 shares of stock apiece from them and I bought 30 shares. I bought 30. I received 40 from Thomasma and 40 from Larson, and then I bought 30 shares.

Q. How many shares of stock do you own at this time?

A. 110.

Q. That is the same number that you owned all along?

A. Yes.

Q. Did Mr. Thomasma do any work with you in trying to get together funds—

A. No.

228 Q. —for the company?

A. No.

Q. At the time that Precision was incorporated, did you know where Mr. Thomasma worked?

A. Yes.

Q. And where was that?

A. At the AMMCO in North Chicago, the Automotive supply company.

Q. Is that Automotive Maintenance Machinery Company?

A. Yes.

Q. At North Chicago, Illinois?

A. That is right.

Q. The plaintiff in this case?

A. Yes, sir.

Q. When did you first know that Mr. Thomasma was an employee of Automotive?

A. From the first time I met him.

Q. You say you tried to get Mr. Thomasma to testify?
A. No, we didn't. We tried to keep him from testifying.
Q. You did not want him to testify in the Interference?
A. No.
Q. Why not?
A. Because of our agreement with Snap-On, no one from the AMMCO company was supposed to be connected with ours.
Q. And what did that have to do with keeping Mr. Thomasma from testifying in the Interference any
229 more than any of the the other witnesses?
A. The Snap-On Tools company would find it out and cancel our contract.
Mr. Lindsey: What was that answer?
(Answer read by the Notary:)
Mr. Fidler: Q. Was there an agreement to that effect?
A. Yes.
Q. A written agreement?
A. I believe there was, although I never saw it.
Q. Do you know who of the Snap-On Tools Corporation entered into that agreement?
The Witness: What was that?
(Pending question read by the Notary.)
A. No, I don't. I believe it was Mr. Johnson, but I am not sure of that, though.
Mr. Fidler: Q. That is Mr. Joseph Johnson?
A. Yes, sir.
Q. Did you at the time of incorporation of Precision Instrument Manufacturing Company know that Automotive had some relations with Snap-On Tools Corporation?
A. Yes.
Q. What is your recollection as to what those relations were?
A. They supplied their torque wrench supplies.
Q. That is, Automotive supplied—
230 A. Snap-On.
Q. —its torque wrenches to Snap-On Tools Corporation?
A. That is right.
Q. And what was the purpose of forming Precision Instrument Manufacturing Company?
A. The manufacture of torque wrenches.
Q. Did you know in forming that company that Pre-

cision Instrument Manufacturing Company was going to take the Snap-On Tools Corporation torque wrench business from Automative Maintenance Machinery Co.?

A. I did.

Q. Who represented Precision Instrument Manufacturing Company in connection with that agreement?

A. Mr. Larson.

Q. I am referring to the agreement wherein Mr. Thomasma from Automotive was to be kept out of the picture.

The Witness: I do not quite understand that question.

Mr. Fidler: Q. I believe that you said that you did not want and that you tried to keep Mr. Thomasma from testifying because you did not want Snap-On Tools Corporation to know about it?

A. That is right.

Q. Because they would cancel the contract, if they knew that you had one of Automotive's employees in the company?

A. That is right.

231 Q. Who represented Precision Instrument Manufacturing Company in entering such an agreement with Snap-On Tools Corporation?

A. Mr. Larson.

Q. And who represented Snap-On Tools Corporation?

A. I believe it was Mr. Johnson.

Q. When was that agreement entered into?

A. The date of it, I don't know.

Q. Was it after the incorporation of Precision?

A. That I don't remember; I wouldn't be able to tell.

Q. Was it after that letter came in from Snap-On Tools Corporation, about the order for the 500 wrenches?

A. I don't know. The first time I knew of the existence of it was after the Precision was about three or four months old.

Q. How did the question arise?

A. I do not remember.

Q. Was there some discussion about Mr. Thomasma's connection with the company at that time?

A. Yes, there was. Mr. Thomasma insisted on coming to work at Precision, and Mr. Larson didn't think it was the thing to do in view of the contract, and that is when I first said, "How about the contract?"

Q. Was that matter taken up in a director's meeting?

A. Yes— No. It wasn't taken up at a directors'
232 meeting. It was just a formal discussion—or, an informal discussion, rather.

Q. Was it taken up in a stockholders' meeting?

A. No.

Q. Who was present at that discussion?

A. Just Mr. Thomasma and Mr. Larson and myself.

Q. Did Mr. Thomasma ever work for Precision Instrument Manufacturing Company?

A. He used to come in evenings and do a little work, but never in the daytime.

Q. And that is while he was still working for Automotive?

A. No; no. He was then working for the Hack Machinery Company.

Q. Mr. Thomasma never did any work for Precision, then, while he was still employed by Automotive Maintenance Machinery Company?

A. He helped us build some benches there, when we first started out, and stuff like that.

Q. Were there any other agreements entered into about the time that Precision was incorporated, between Precision and Snap-On Tools Corporation?

A. Not that I know of.

Q. Was there any other reason why you did not want Mr. Thomasma to testify in the Interference?

233 A. No.

Q. Was there any reason to the effect that his testimony might be contrary to what you and Mr. Larson had given?

A. No.

Q. In other words, you thought he would testify to the same facts that you and Mr. Larson had testified to?

A. I believe he would have.

Q. Had he agreed to do so?

A. No.

Q. Well, what makes you think that he would have done so?

A. Well, he owned a goodly share of the Company and no doubt, he would try to protect it as well as he should.

Q. Well, do you know why Mr. Schultz testified, as he did, in the Interference?

A. No, I don't.

Q. Did the fact that he was making all the castings for you have anything to do with it?

A. I don't know. I never contacted Mr. Schultz, only a half dozen times up until that time.

Q. Do you have any idea or a rough guess as to how much money has been paid to Mr. Schultz, for castings?

A. No, I wouldn't have the slightest idea.

Q. It amounts to several thousand dollars, does it not?

A. Oh, I would think it would amount to something around there, yes.

Q. Did not Mr. Thomasma refuse to testify in the 234 Interference?

A. Never at any discussions that I ever heard.

Q. Who was present at the discussions that you did have with Mr. Thomasma—

A. Mr. Larson.

Q. Did any of those discussions involve the possibility of Mr. Thomasma testifying in the Interference?

A. Yes.

Q. And what was said?

A. Nothing, only that we thought that he should stay away rather than to testify, and stay out of the picture completely.

Q. Did you know what Mr. Ford and Mr. Schultz and the other witnesses, who testified on behalf of Mr. Larson, were going to testify to, before they took the witness stand?

A. No.

Q. Do you know whether or not anyone connected with Snap-On Tools Corporation had anything to do with the preparation of the Preliminary Statement in Interference No. 77,565?

A. No, I don't.

Mr. Freeman: Will you read that last question?

(Last question and answer read by the Notary.)

Mr. Ooms: Will you read the previous question also?

(Record read by the Notary.)

235 Mr. Fidler: Q. Did you tell Mr. Larson anything as to which he should testify?

A. No.

Q. Did anyone tell you what you should testify to?

A. Only in the discussion between Mr. Larson and myself.

Q. Do you know whether Mr. Larson ever made any

written memoranda as to the testimony that he was to give in the Interference?

A. No, I don't.

Q. Whose idea was it to incorporate Precision Instrument Manufacturing Company?

A. Mine.

Q. Did you use the agreement of September 28th, 1938, which is attached as Exhibit 5 to the Petition filed herein by Snap-On Tools Corporation, in an attempt to sell stock in the company?

A. No. No.

I don't have to see it, because I never used any agreement.

The Notary: What is that?

The Witness: I say, I don't have to see it, because I never used any agreement. The only thing I used was that letter that you referred to in the first part of this testimony.

Mr. Fidler: Q. Do you recollect why you did not use that agreement?

A. I never saw it.

236 Q. But you knew of it when you were selling the stock, did you not?

A. I did not.

Q. What part of the machinery and tools did Mr. Thomasma contribute to Precision?

A. Well, as I understood it, Mr. Larson and Mr. Thomasma owned jointly some hand tools and some castings and some steel and a couple of drill presses and lathes and some fixtures and jigs and a band-saw, and stuff like that.

Q. And do you know what value was placed on those materials?

A. I don't know offhand, no.

Q. Was it sufficient to cover the value of the stock?

A. Yes; together with their invention and machinery, we felt it was sufficient to cover the value of the stock.

Q. Well, at the time that Precision was incorporated, Mr. Larson had filed his application which was involved in the Interference, had he not?

A. I don't know.

Q. Well, you don't know that such an Application was filed?

A. Yes; I do.

Q. Who owned that Application?
A. Mr. Larson.
Q. Did you know that that Application had been assigned to Snap-On Tools Corporation?
237 A. Not until after the corporation had been formed.
Q. How long after that?
A. Six weeks or so.
Q. That is, the patent application which constituted a part of the assets of Precision—
A. That is right.
Q. —had been assigned to Snap-On Tools Corporation?
A. That is right.
Q. Did you sell any stock after that time?
A. No.
Q. Do you know what Snap-On Tools Corporation gave for the Larson Application?
A. Gave for the Larson Application?
Q. Yes.
A. Merely the right and promise to take the tools it manufactured, tools manufactured by Precision Instrument.
Q. You mean that is the consideration that Snap-On Tools Corporation gave for that Application?
A. That is right. The Application was merely collateral or put up there to assure the Snap-On Tools that Precision would live up to their contract.
Q. And if they did not live up to the contract, then what?
A. I imagine they could have taken over the Application.
Q. Well, at that time they had already had the Application assigned to them, had they not?
A. I am not sure, but I think they had.
238 Q. Did some attorney handle the incorporation of Precision for you?
A. Yes.
Q. And who was that?
A. Bert Sinstock. I don't know how he spells it.
Q. Where was he located?
A. In Des Plaines.
Q. Was he a Justice of the Peace?
A. Yes.

Q. When did you start manufacture of wrenches by Precision Instrument Manufacturing Company?

A. I believe it was in January, 1939.

Q. And what equipment did you acquire for that manufacture?

A. Oh, drill presses and lathes and grinder.

Q. And when was that secured?

A. During the latter part of December and the first part of January, somewhere along after we started there.

Q. From whom was that equipment acquired?

A. Any second-hand place we happened to run in to, where they had a decent machine we could buy reasonably. There were about twelve, I believe we bought about 12 different pieces of equipment and bought them all from different places.

Q. What were the names of any of those concerns that you can remember?

A. I don't believe I could recall any of them now.

239 Q. Who handled the purchase of that equipment?

A. Mr. Larson.

Q. Did anyone help him?

A. I was along with him all the time.

Q. How much did that equipment cost?

A. About $2800.00.

Q. Where did the money come from for that equipment?

A. The money collected from the stockholders.

Q. Did Snap-On Tools Corporation advance any money in respect to any orders that you received from them?

A. No.

Q. How much money did you secure from the stockholders?

A. $3200.00.

Q. And that represented the sale of how many shares of stock?

A. 320 shares.

Q. That left you $400.00 to purchase materials?

A. That is right.

Q. How many wrenches were covered by the first order that you received from the Snap-On Tools Corporation?

A. 500.

Q. And what did the material for those wrenches cost?

A. I wouldn't have the slightest idea, now.

Q. Would it cost $400.00?

A. Yes.

240 Q. Where did the money come from for that?

A. Out of my pocket.

Q. How much money did you advance?

A. About $800.00. It wasn't in cash. It was on my own credit. The money wasn't advanced in cash. That was on my credit.

Q. Did Snap-On Tools Corporation buy any stock in Precision Instrument Manufacturing Company?

A. No, no.

Q. Did they ever buy any stock in Precision Instrument Manufacturing Company?

A. No.

Q. Did they ever acquire any interest in Precision Instrument Manufacturing Company?

A. No.

Q. Were you acquainted with anyone at Snap-On Tools Corporation, at the time of the incorporation of Precision?

A. No.

Q. Was Mr. Larson acquainted with anyone at Snap-On Tools Corporation at that time?

A. Yes.

Q. Who was that?

A. I don't know.

Q. Did you have any relative working for Snap-On Tools Corporation?

A. No.

241 Q. Did Mr. Larson have any relative working for Snap-On Tools Corporation?

A. I don't know.

Q. Now referring to the letter that was received from Snap-On Tools Corporation respecting the order of 500 wrenches and which you showed to the stockholders, was that letter discussed with Mr. Thomasma?

A. I don't believe there was ever any discussion about it. However, he had seen it.

Q. Was it ever discussed with Mr. Alberts?

A. Not to my knowledge.

Q. Did Mr. Ford receive any remuneration of any kind for testifying falsely in the Interference?

A. No.

Q. Did you receive anything?

A. No.

Q. Did Mr. Schultz receive any remuneration—

A. No.

Q. —for so testifying?

A. No.

Q. Did anyone ever accuse you of testifying falsely in the Interference?

A. No.

Q. Did anyone ever threaten you with prosecution for testifying falsely in the Interference?

A. Yes.

242 Q. Who was that?

A. Through Mr. Hobbs, you and Mr. Lindsey and Mr. Wacker.

Q. Well, did Mr. Hobbs threaten you?

A. Mr. Hobbs said that you people were threatening us.

Q. Well, did anyone to you personally ever threaten you with prosecution for testifying falsely in the Interference?

A. Did anyone talk—to me personally?

Q. Yes.

A. No.

Q. Did you ever talk to Mr. Wacker at any time about it?

A. No.

Q. Did you ever talk to Mr. Lindsey at any time about it?

A. No.

Q. Did you ever talk to me at any time about it?

A. No.

Q. Now will you please state as fully and as exactly as you can what Mr. Hobbs told you in that respect?

A. Well, he told me that you and Mr. Lindsey and Mr. Wacker would unleash the dogs on us if we didn't sign that agreement. It was the agreement that he had up there.

Q. What else did he say?

A. Nothing, only that we were in a bad spot and it would be just as well if we signed the thing, because if we signed it we would have a bonfire.

Q. Anything else he said?

A. That is about as much as I can remember.

243 There was a lot said, but I can't remember all of it.

Q. Now, just what was it that Mr. Hobbs said that Mr. Wacker said?

A. Nothing. He mentioned all three of you at the time.

He didn't mention any one individually. He said that both you and Mr. Lindsey, and Mr. Wacker were pretty mad about the whole affair.

Q. Did Mr. Hobbs say that he had talked to anyone about it?

A. He had talked to you three, I guess, or one of you, I don't know which it was: He did not mention who he talked to about it, no.

Q. Did he say that he had talked to Mr. Wacker about it?

A. No. He didn't.

Q. Did Mr. Hobbs say that he had talked to Mr. Lindsey about it?

A. He did not.

Q. Did Mr. Hobbs say that he had talked to me about it?

A. Yes, sir.

Q. And what did Mr. Hobbs say that he had talked to me about?

A. Just what I just told you.

Q. What was that?

A. That you were pretty mad and that you and Mr. Lindsey and Mr. Wacker were ready to unleash the dogs on us.

Q. For what?

A. Well, if we didn't sign that agreement that you had had prepared.

Q. And is that all that Mr. Hobbs said?

A. He said other things, but I just can't remember what they were. He tried to get us to sign the agreement, to avoid a lot of trouble.

Q. Now, when was it that Mr. Hobbs told you that?

A. It was the day that Mr. Hobbs called us in for the first agreement, if you remember what day that was. I don't remember what day that was. That was the agreement that we wouldn't sign.

Q. Well, when did you first talk to Mr. Hobbs about the testimony that you had given in the Interference?

A. It was right after we left Mr. Alberts' office, the day that Mr. Johnson and Mr. Alberts were up at your office.

Q. Now, at the time you are referring to is the same day of a conference in my office between Mr. Alberts, Mr.

Joseph Johnson of Snap-On Tools Corporation, Mr. Wacker and myself and Mr. Allen?

A. I don't know who was there. The only thing I know of was that Mr. Alberts and Mr. Johnson were there. I don't know who else was there.

Q. Well, was that the day that Mr. Thomasma was present and told a story to Mr. Alberts and Mr. Johnson?

A. It was the day that Mr. Alberts and Mr. John-
245 son called us into the office and they had just came back and found out what it was all about.

Q. Well, who called you into Mr. Alberts' office?

A. I believe it was Mr. Alberts.

Q. And what did he say?

A. He was pretty mad.

Q. What did Mr. Alberts say in calling you into his office?

A. He wanted to see us down at the office.

Q. Was that over the telephone?

A. Yes.

Q. And you went down to his office?

A. That is right.

Q. Now, when you got down to Mr. Alberts' office, who was there?

A. Mr. Johnson and Mr. Alberts.

Q. And who went with you at that time?

A. Mr. Larson.

Q. And when you got there, what was said to you?

A. Nothing was said to me. Mr. Alberts confronted Mr. Larson with the evidence that he had and tried to make him admit that it was so.

Q. What was the evidence that he tried to make him admit?

A. The perjury evidence, the perjured evidence that he had given.

Q. Testimony that he had given in the Interference?

246 A. That is right.

Q. And did Mr. Larson so admit it?

A. He did.

Q. Was anything said to you by Mr. Alberts?

A. No. The conversation was all with Mr. Larson.

Q. Well, did you admit at that time that you had given false testimony in the Interference?

A. I wasn't even asked.

Mr. Lindsey: What is that?

(Answer read by the Notary.)

Mr. Fidler: Q. Now, was there any discussion at that time about the testimony that Mr. Ford had given?

A. No.

Q. Was there any discussion at that time about the testimony that Mr. Schultz had given?

A. No.

Q. Was there any discussion at that time as to the testimony that the other witnesses testifying on behalf of Mr. Larson had given?

A. Not that I remember.

Q. How long did that conference between you and Mr. Larson, Mr. Alberts and Mr. Johnson, in Mr. Alberts' office, take that day?

A. Oh, less than five minutes.

Q. And then what did you do?

247 A. Well, Mr. Alberts was pretty mad and he wanted—he asked Mr. Larson whether the testimony—whether the thing was so or not, whether he had made the drawing or not and then he said, "Now, if it is so, I want to know it, and if it isn't so, I want to know it. If it isn't so, I don't want anymore to do with the case." And he says, "If it is not so, why, you better start getting yourself a lawyer, because you are going to need him." And finally Mr. Larson admitted it was so and he requested if he could recommend a lawyer, and he gave us the addresses of three lawyers, and we picked Mr. Hobbs and we went over to see him, right from there.

Q. Was that the first time, as far as you know, that Mr. Larson had admitted that his testimony was false?

A. As far as I know, yes.

Q. What else was said in Mr. Alberts' office that day, during the conference between you, Mr. Larson, Mr. Alberts and Mr. Johnson?

A. The only thing else that I can remember is when Mr. Johnson spoke up and said he was going to find some way to cancel the contract.

Q. What contract was that?

A. It was the contract between Precision and Mr. Larson and the Snap-On.

Q. Is that all that was said?

A. That is all there was time to say; and Ken 248 dashed out of the office and I followed him.

Q. Then where did you go?

A. We went over to Mr. Hobbs' office.

Q. How did you happen to go to Mr. Hobbs' office?

A. Mr. Alberts gave us the names of three attorneys and said, "There they are," we could go over and talk to them, and we picked Mr. Hobbs out and when we got downstairs we went over and saw him because he was the closest there.

Q. Did anyone go with you to Mr. Hobbs' office?

A. No. Just Mr. Larson and I.

Q. When you saw Mr. Hobbs that day, what did you tell him?

A. We told him the whole story.

Q. Well, what was the story?

A. Well, I don't remember—We just told him that we had given perjured testimony in the deposition, that we were in a bad spot and we came over to see him. He asked a lot of questions of Mr. Larson, I don't remember what they were, and he said, "Well, the only thing I can do is get in touch with Mr. Lindsey," or Mr. Fidler I believe he said.

Q. Is that all that Mr. Hobbs said?

A. Well, that was a very short conference, at that time, that first one.

Q. Was there anything else that you or Mr. Larson said?

A. I don't remember.

249 Q. What did Mr. Hobbs say he was going to see Mr. Fidler about?

A. He didn't say.

Q. Well, did you have any idea of what he was going to see Mr. Fidler about?

A. I don't know. I presume that it was about the testimony that we had given, to see what it was all about.

Q. Well, was there any question of a settlement, that you recollect?

A. Not at that first meeting.

Q. How long did that first meeting with Mr. Hobbs last?

A. Not over ten minutes.

Q. When was the next time that you saw Mr. Hobbs?

A. The day that you sent the contract over, or the following day.

Q. Well, how long after the first conference was that?

A. I imagine it was a week or ten days, somewhere in

there. It might not have been that long even. I don't remember just how long it was.

Q. Well, did you talk to Mr. Hobbs over the telephone, on anything during that interval of time?

A. I never did, no.

Q. Did Mr. Larson?

A. I believe he did.

Q. Did Mr. Larson tell you what they had talked about?

A. No.

250 Q. Do you know whether Mr. Hobbs did get in touch with me?

A. No. However, he must have. He came back with the contract a few days later. He must have come from somewhere.

Q. Well, did Mr. Hobbs ever advise you in any way that he had gotten in touch with me?

A. Not me, but he advised Mr. Larson.

Q. What did he advise Mr. Larson in that respect?

A. That he had gotten in touch with you and that a settlement was pending of some sort.

Q. Well, do you recollect whether Mr. Larson was told by Mr. Hobbs what was done when he got in touch with me?

A. No. I don't.

Q. Did Mr. Larson tell you what Mr. Hobbs had said about getting in touch with me?

A. No.

Q. Did Mr. Larson tell you that Mr. Hobbs had told him where he had gotten in touch with me?

A. No.

Q. Can you place the time that Mr. Hobbs got in touch with you, with that first agreement, any better? How many days after your first conference with Mr. Hobbs?

A. I wouldn't have the slightest idea. The closest I could place it would be within a week or ten days and that might not even be correct.

251 Q. Where did Mr. Hobbs get in touch with you?

A. He didn't get in touch with me. He got in touch with Mr. Larson at Precision.

Q. Did you see him when he was out there?

A. Oh no. He called up at Precision and then we came in.

Q. And what did Mr. Hobbs have to say when you came in, at that time?

A. He showed us that contract and told us at that time we either had to sign that thing or else.

Q. And was it a fully prepared contract?

A. Yes, sir.

Q. And what did that contract provide?

A. I don't know. I did not read it very well, but I know it wasn't a very equitable contract.

Q. Well, did you read it?

A. Part of it.

Q. Why didn't you read all of it?

A. Well, because after I read the first part, I didn't want no more of it.

Q. What was the first part of it, that you remember?

A. I don't exactly recall, but it was sure putting us in the dog house, putting us out of business entirely.

Q. Well, don't you recollect anything that it provided?

A. No, not exactly. I don't remember legal terms very well.

Q. What did Mr. Hobbs say when you went in to see him, at that time?

252 A. Well, he advised us that we should sign the contract, and we refused to sign it, and he said, "Well, the only thing I can do is take it back and tell them about it and see if we can get a more equitable contract."

Q. Is that all Mr. Hobbs said at that time?

A. That is all he could say, when we wouldn't sign the contract and after he advising us to sign it.

Q. Was that all that Mr. Hobbs had to say at that time?

A. That is the only thing I can remember, at present.

Q. Well, did Mr. Hobbs take that contract back and get another one?

A. Well, he got in touch with us a short time later, with another contract.

Q. And where did he get in touch with you at that time?

A. At his office.

Q. Who was present at that time?

A. Mr. Hobbs and Mr. Larson and I.

Q. And did he have a new contract, at that time?

A. Yes.

Q. How long was that after you had seen the first contract?

A. It seems to me like it was a very short period. I

couldn't say how long, but it doesn't seem to me now that there was very much time elapsed between the two contracts.

Q. What was the difference between that contract
253 and the one that you had seen first?

A. Well, the first contract put us out of business entirely, and the second contract allowed us to go out and manufacture the wrenches we had on order.

Q. And what did you think about that contract?

A. Well, that was a little fairer. We had no choice in that matter at all. There were a few phrases in that, that we had changed, and then we signed the contract the next time we went down to his office.

Q. What do you mean, that you did not have any choice?

A. Well, we either had to sign the contract or go to jail?

Q. Who told you that?

A. Mr. Hobbs told us that you told him that.

Q. Now, just what did Mr. Hobbs say to you?

A. I wouldn't know in that many words, but that is what he—that is the impression he left on me, that you said either sign the contract or go to jail.

Q. Well, can you state Mr. Hobbs' words any more exactly than that?

A. I couldn't state them to you exactly, but I know that is just about the sum and substance of the whole thing, he insisted that we sign it and we told him that we didn't like it and he said, "Well, I am afraid you have got no choice." I remember that part.

Q. There is nothing else that you remember, that he said?

254 A. Nothing that I can remember too clearly, no.

Q. And whose names did he mention, then?

A. He mentioned yours and Mr. Lindsey and Mr. Wacker.

Q. What did he say that Mr. Wacker had said?

A. Nothing. He didn't— He definitely said that you people were mad and that your would unleash the dogs if we didn't sign.

Q. Those are the words that Mr. Hobbs used?

A. Yes, sir.

Q. Well, did he explain to you what those words meant?

A. No. They didn't need any explanation at all.

Q. Why didn't they need any explanation?

A. I am sufficiently intelligent to know when I am doing something wrong, and if someone gets something on me, that that is what they meant by it.

Q. And how long did that conference last?

A. Just long enough to sign and get out.

Q. How long was that?

A. Oh, an hour. That was the time that he told us that if we signed that contract, that you would have a big bonfire.

Q. Just what were Mr. Hobbs' words in that respect?

A. I don't know what the exact words were, but those are just about the words he said, that you would have a big bonfire if we signed that contract.

255 Q. Who do you mean by "you", in your last answer?

A. I mean Mr. Fidler and that is, probably who he meant when he said they would have a big bonfire.

Q. Is that who you understood?

A. That is who I understood it was. Those were the ones that were gunning for us.

Q. You discussed that with Mr. Larsen?

A. Yes.

Q. And do you know who he understood it to mean?

A. Yes, sir.

Q. Who did he understand it to mean?

A. Mr. Wacker and you and Mr. Lindsey.

Q. A big bonfire of what?

A. Of the evidence.

Q. What evidence?

A. The evidence presented when the transcription was taken.

Q. Who had that evidence?

A. You had.

Q. Only me?

A. I don't know who else had it.

Q. When you testified in the Interference, you were shown certain wrench parts as physical exhibits in the Interference, were you not?

A. I was.

Q. Whose were those, do you know?

A. The exhibits?

Q. Yes.

A. They were ours.

Q. Well, who had possession of those exhibits?
256 A. Mr. Alberts.
Q. And there were some records, paper records also, in the Interference; whose were those?
A. That I do not know. I never saw them, as I remember.
Q. Did you ever see a drawing that was offered in evidence?
A. Oh yes.
Q. A drawing that was signed by Mr. Ford and Mr. Dawson and Mr. Larson?
A. Yes, I did.
Q. A drawing which Mr. Larson testified was made by a high school boy, whereas, it was made by Mr. Thomasma?
A. Yes.
Q. Who had possession of that drawing?
A. I believe Mr. Alberts did.
Q. You still understood that the persons that were going to have the bonfire, as you put it, were Mr. Lindsey, Mr. Wacker and myself?
A. Yes, sir.
Q. And what was to be included in that bonfire?
A. It was never said what was to be included, but we took it for granted that it was to be the evidence in the case.
Q. You took that for granted?
A. Yes.
Q. Mr. Hobbs didn't tell you that, did he?
257 A. Yes.
Q. He told you that?
A. Well, he told us that all the evidence would be burned, we would have a big bonfire.
Q. Did Mr. Hobbs tell you that?
A. Yes.
Q. Upon the day that you signed the agreement?
A. Yes.
Q. Did Mr. Hobbs say what that evidence was?
A. No; not distinctly what it was, no.
Q. Did he name the persons that were going to participate in that—
A. No.
Q. After you signed that agreement, where did you go?
A. Home.

Q. And when did you next see Mr. Hobbs?

A. I never saw him since then.

Q. Was this contract matter, including the signing of the contracts, explained to the stockholders of the Company?

A. Yes.

Q. When was that, now?

A. That is, explained to some of the stockholders of the Company, yes.

Q. When was that done?

A. At the time we purchased the stock back.

Q. When was that?

A. I don't know exactly. About a month or so after that.

258 Q. Now, through all of these dealings with respect to the settlement of the Interference, I understand that all of the negotiations and discussions you had with Mr. Hobbs, and Mr. Alberts was not in the picture, is that corrtet?

A. Yes, that is right.

Q. So all that was said and done in that connection was between you and Mr. Larson and Mr. Hobbs?

A. Yes, to the best of my knowledge, yes.

Q. Now, what stockholders were present at the time that you explained the contracts to the stockholders?

A. We didn't have a stockholders' meeting. We explained it to them individually.

Q. Now, you referred to buying back stock. Who bought back the stock?

A. Precision Instrument company.

Q. Where is that stock now?

A. In the treasury.

Q. And who advanced the money for the purchase of that stock?

A. We had the money.

Q. You mean that the money for the purchase of that stock came out of the treasury of Precision Instrument Company?

A. That is right.

Q. Who handled the buying back of the stock?

A. I did.

259 Q. Who are the stockholders of Precision now?

A. Mr. Larson, Mr. Westman, Mr. Sheerer, Mr. Fisher and myself.

Q. What is Mr. Westman's full name?
A. Willard—
Q. Do you know where he lives?
A. 2953 North Damen.
Q. Chicago, Illinois?
A. Yes.
Q. What is Mr. Sheerer's full name?
A. Harold—
Q. Where does he live?
A. In Des Plaines. I would not know the address.
Q. What is Mr. Fisher's full name?
A. Louis—
Q. Where does he live?
A. He is right now with the U. S. Army in Australia.
Q. What business is Mr. Westman in?
A. He is a chauffeur.
Q. For whom?
A. For the Illinois Traveling Men's Association, R. A. Cavenaugh's Traveling Men's Association, R. A. Cavenaugh used to be the Secretary. I don't know who is now.
Q. What business is Mr. Sheerer in?
A. He is a Public Accountant.
Q. Where is his business located?
A. I don't know. He was working for some concern here as a C.P.A.
Q. And what business was Mr. Fisher in?
260 A. He was a bookkeeper and accountant.
Q. With what concern?
A. I do not know.
Q. Besides Mr. Larson and yourself, are any of the original stockholders now stockholders?
A. Yes. Mr. Westman, Mr. Sheerer and Mr. Fisher.
Q. The stock of all of the other stockholders having been purchased and turned back into the treasury?
A. That is right.
Q. Do Mr. Westman, Mr. Fisher and Mr. Sheerer still own the same number of shares that they did originally?
A. Yes.
Q. Did Mr. Alberts inform you of a conference which he had in my office, with me, when he and I were the only persons present?
A. No. Mr. Alberts never did such business with me. He always did most of his business with Mr. Larson.

Q. Well, did you ever know of any such conference between Mr. Alberts and me?

A. No.

Q. Do you recollect that it was decided to concede priority of invention to the party Zimmerman in Interference No. 77,565, so that the patent would issue to Zimmerman?

A. I believe that is what that contract was for, wasn't it, that we signed with you?

261 Q. You remember that that was agreed upon?

A. Yes.

Q. Do you remember who proposed that?

A. No.

Q. Were you ever asked anything about that, by anyone?

A. No.

Q. So you have no knowledge whatever as to who made the decision in that respect?

A. No.

Q. At the time that the agreement was entered into by the Precision and Automotive in the settlement of the Interference, had you read that agreement through?

A. The last agreement?

Q. Yes.

A. Yes.

Q. I show you a copy of an agreement which is attached to the Complaint filed in this case as Exhibit 1, and ask you whether or not that is the agreement which you have testified to as having been signed that last time that you saw Mr. Hobbs?

(Witness Carlsen examines said document.)

A. Yes; I think it is.

Q. You and your company proceeded to operate under that agreement, did you not?

A. We did.

262 Q. And I call your attention to the paragraph numbered 3 which refers to the manufacture of 6,000 wrenches; did you make up those wrenches?

A. All but one.

Q. Did you think that was fair?

A. Well, no, not exactly.

Q. Well, what did you pay for making up those wrenches?

The Witness: What?

Mr. Fidler: Q. What did you pay for making up those wrenches?

A. Well, we lost our Wrench and we were virtually out of business, all except those 6,000 tools.

Q. Well, at that time, did Mr. Larson have another wrench that he thought he might make?

A. I don't know.

Q. You never discussed anything like that with him?

A. He never discussed anything like that with me, no. I was never interested in anything like that.

Q. Well, at that time did the wrench that you are making at the present time enter into the picture?

A. No.

Q. When did you first learn of the wrench that you are now making?

A. Oh, in about June of 19—or February of 1941, somewhere in there.

263 Q. What were the circumstances under which you learned of that Wrench, then?

A. Larson came down with it and was going to test it out.

Q. Do you know how long it took to prepare the Application for patent for that Wrench?

A. No, I don't.

Q. Did you know that an Application for patent was being prepared for that Wrench?

A. No.

Q. Did you know that an Application for patent for that Wrench was ever filed?

A. No.

Q. Do you know whether a patent ever issued covering or showing that Wrench? I am speaking of the Wrench that you now manufacture.

A. The new Wrench, yes, I just recently saw the patent.

Q. When did you first learn of that?

A. The day that the patent arrived at our office, a copy of the patent.

Q. Who pays the bills for Precision Instrument Manufacturing Company?

A. I do.

Q. Were any bills paid for the preparation of a Patent Application covering the wrench that you are now making?

A. I don't know. I never looked— We have several patents pending now that I pay the bills on. I send
264 Mr. Alberts a check and I never see what they are.

Q. Well, who is handling those Applications?

A. Mr. Alberts.

Q. As attorney for Precision Instrument Manufacturing Company?

A. As attorney for Mr. Larson.

Q. Does Mr. Larson have a separate arrangement with the Company, respecting his inventions?

A. Yes.

Q. Are his inventions part of the assets of Precision Instrument Manufacturing Company?

A. No.

Q. Is there any licensing arrangement as between Precision Instrument Manufacturing Company and Mr. Larson?

A. Yes.

Q. Who prepared those license agreements?

A. Mr. Alberts.

Q. Am I correct in saying that Mr. Alberts ceased to represent Mr. Larson and Precision that day in his office, when he called you and Mr. Larson in about the false testimony?

A. That is right.

Q. For how long did he cease to represent you, that is, Precision and Larson?

265 A. He hasn't represented Precision since then, with the exception of one day I think, when Mr. Hobbs refused to take our case any longer.

Q. And when was that?

A. That was just before the signing of that agreement.

Q. What was the occasion of Mr. Hobbs refusing to represent you, at that time?

A. Well, we were just stubborn and did not want to sign, and Mr. Hobbs said if we didn't sign, he did not want the case any longer, he didn't want to represent us.

Q. And Mr. Alberts became your attorney then?

A. Well, just for that day is all. Mr. Hobbs sent whatever the paper was back to Mr. Alberts and then Mr. Hobbs went on the next day from there again.

Q. What did Mr. Hobbs have to say to you at that time?

A. Nothing much, only he just didn't want the case any longer.

Q. What did Mr. Alberts have to say at that time?

A. I did not see Mr. Alberts at the time.

Q. And that was just for one day, I believe you said?

A. I think that that is what it was. I never saw Mr. Alberts at the time, so I don't know how long a period it

was. It seems to me it was only one day, because I think that happened one time when we were down there, and the next time we were down in Mr. Hobbs office again.

266 Q. You do not remember exactly the occasion for Mr. Hobbs taking that position?

A. No, I don't.

Q. Did Mr. Alberts cease to represent Mr. Larson that day, when you and Mr. Larson were called into his office respecting the false testimony?

A. Yes. That was the day.

Q. How long did that situation continue?

A. Until after we had signed the agreement and we had settled.

Q. How long after you had signed the agreement?

A. Oh, it must have been probably two weeks or so.

(And thereupon, at 3:55 o'clock P. M., Tuesday, April 13, 1943, a recess was taken until 4:10 o'clock P. M. of the same day.)

Mr. Fidler: Q. Mr. Carlsen, about what time did you finish up at Precision the 6,000 wrenches provided for in the agreement which is Exhibit 1 attached to the Complaint?

A. I believe it was in March, 1941, but I am not sure of that. March, 1941. I am not sure of that though. It may have been a little later than that. That is just a guess.

Q. That would give you about three months' time 267 in which to complete those 6,000 wrenches?

A. Well, then the date must be wrong, because we couldn't have made that many — In 1942, then. I would have to look that up. I have that record.

Q. After you finished those 6,000 wrenches, did you discontinue the manufacture of torque measuring wrenches?

A. Yes.

Q. Well, you are manufacturing a torque measuring wrench now, are you not?

A. Yes.

Q. Well then, when did you begin to manufacture?

A. About a month after we stopped making up the 6,000.

Q. Then, you did continue on, after making up the 6,000 —

A. Oh yes.

Q. — as provided by the contract?

A. Yes.

Q. (Continuing.) With the manufacture of another torque measuring wrench?

A. Of a torque wrench, yes; that is right.

Q. When was the first time that you were advised by Mr. Alberts in respect to the nature of the testimony that was given in Interference No. 77,565?

A. The same day that we met Mr. Alberts, after the conference in your office.

Q. Is that the first time that Mr. Larson was advised?

A. I think so.

268 Q. There wasn't any written communications of any kind prior to that time?

The Witness: You mean on the testimony that we had given?

Mr. Fidler: Yes.

A. No. There weren't. Not that I remember, anyway.

Q. Well, do you recollect having received from Mr. Alberts a letter, about the middle part of November, 1940, in which he advised that he had called somebody and told them the testimony was all wrong, or something like that?

A. Yes, I believe I do. I believe I do. Yes, I do remember that that was at the time we were having some trouble with an attorney, who was a stockholder, and we thought it was him who was doing it.

Q. And what was the name of that attorney?

A. Krichiver.

Q. Do you know his first name?

A. David.

Q. Did you think that Mr. Krichiver had told Mr. Alberts about this?

A. I don't know. He was Mr. Thomasma's attorney.

Q. You do not know the fact in that respect?

A. No, I don't, but we just took it for granted that it was Krichiver, because he was trying his best to make all the trouble he could in the corporation.

Q. You took it for granted that it was Krichiver that did what?

269 A. That wrote this letter or called up Mr. Alberts at the time.

Q. Do you recollect what Mr. Alberts' letter stated?

A. No. Not exactly. I do remember, though, that it was something about a telephone call that he had gotten from someone that said that the testimony we were giving in the case wasn't the truth.

Q. Was that before the day that Mr. Alberts called you and Mr. Larson into his office?

A. Yes.

Q. How long before?

A. I couldn't say exactly.

Q. A week?

A. I think it was more than that.

Q. Did you then talk to Mr. Alberts about that?

A. Mr. Larson did. I didn't.

Q. How soon after receiving the letter did Mr. Larson talk to Mr. Alberts about that?

A. That I don't know.

Q. Well, was it the same day that he talked to you about it?

A. I don't think so.

Q. The next day?

A. That I don't remember. I don't remember just when it was.

Q. Did Mr. Larson talk to you about it the same day—

A. The day that the letter came in.

Q. —that the letter was received?

A. Yes, I believe he did.

270 Q. Who opens the mail at Precision Instrument?

A. I do.

Q. Did you read the letter before you handed it to Mr. Larson?

A. I read it and laid it on the desk, and Larson read it when he came in.

Q. What did you say to Mr. Larson about that?

A. We didn't discuss it at all.

Q. Why not?

A. Well, we didn't think we would have any—it wasn't important enough to discuss. We felt like it was Krichiver, and as far as anything that Krichiver had done we didn't discuss very much up there, because we did not pay much attention to it.

Q. How long did the letter lie there on the desk before you took any action?

A. I did not take any action.

Q. Well, before Mr. Larson took any action?

A. I don't know when he took any action on it.

Q. Well, how long did the letter lie on the desk?

A. Just one day.

Q. Then what happened to it?

A. It was put in the files.

Q. Do you have that letter available, now?

A. I do not know.

271 Mr. Ooms: Unless the letter is in the files.

The Witness: Here is a file that I had. Do you want to look through it and see whether you find it in there?

Mr. Fidler: I would rather that you look and see whether or not you find any letter of that character.

A. No. It is not in this.

Q. Do you know what became of the original of that letter?

A. No. I don't.

Mr. Freeman: Do you want a copy of it, Mr. Fidler? I have a copy here in Mr. Alberts' file. We will be glad to give you a copy of it.

Mr. Fidler: If you please.

Mr. Freeman: And I want the record to show that it is being handed to you by counsel for Snap-On.

Mr. Lindsey: We also want to see the original of that.

Mr. Ooms: Maybe you can tell us—

Mr. Freeman: You go and get the original. We are just for convenience giving you a copy.

Mr. Lindsey: We want to see the original. As I understand, it is in the possession of Precision. We never had it.

Mr. Freeman: I didn't say this came from Precision. I said this was taken from the file of Mr. Alberts, which is a copy of a letter that he wrote to Precision about it.

Mr. Lindsey: My only point is that we want to see the original too.

The Witness: Well, Mr. Lindsey, everything is here
272 that I have in the file up there. If the letter isn't here, it just isn't in existence anymore.

Mr. Freedman: I have no idea where the original letter is.

The Witness: It is probably in the waste-basket with some of the other stuff.

Mr. Fidler: Q. I hand you a copy of a letter dated November 11, 1940, which Mr. Freeman has just handed to me from Mr. Alberts' file—

Mr. Freeman: That should have been "from the Snap-On files."

Mr. Fidler: Q. (Continuing.) —from the Snap-On files, and ask you whether or not you received the original of

that letter?' (Mr. Fidler hands said document to the witness.)

(Witness Carlsen examines said document.)

A. Yes. That is the one.

Q. And that is the letter you have been testifying about, as having been received around the middle of November?

A. Yes, sir.

Q. (Continuing.) From Mr. Alberts, in respect to the testimony given in the Interference?

A. That is right.

Q. Now, do you know whether or not Mr. Larson, after receiving this letter, got in touch with Mr. Alberts about it?

A. No, I don't.

273 Q. Did he ever say anything about any conversations he had with anybody about it?

A. No.

Q. Do you know whether or not Mr. Larson discussed this letter of November 11th with anyone at Snap-On?

A. No, I don't.

Q. Do you recollect whether or not the original of this letter of November 11th, 1940, was discussed with anyone, by you and Mr. Larson?

A. No.

Q. Do you have any recollection of having gotten in touch with Mr. Thomasma, after receiving this letter?

A. No.

Q. Have you any recollection of having shown this letter to Mr. Thomasma?

A. No.

Q. Do you know whether or not Mr. Thomasma, about the time that this letter was received, had knowledge of its receipt?

A. No; he did not have.

Q. Did not you and Mr. Larson get in touch with Mr. Thomasma and show him this letter, at which time he was working for the Hack Machine Company?

A. No.

Q. At Des Plaines?

A. We did not.

Q. Did not you and Mr. Larson ride in an automobile with Mr. Thomasma, at about the time of the receipt

274 of this letter of November 11, 1940, and show to him such letter?

The Witness: How long after the beginning of the testimony did this thing occur—did this letter occur?

Mr. Fidler: This letter is dated November 11, 1940 and, if I recall correctly, the testimony ended about November 4th, 1940, this letter having been written about a week after the completion of the testimony.

A. No. Neither one of us talked to Thomasma from the beginning of the testimony to the end of it or even after the end of it, I don't believe either one of us as much as said "Hello" to him since the beginning of this testimony.

Q. Did not you or Mr. Larson talk to Mr. Thomasma at some time, about this letter of November 11, 1940?

A. No.

(Discussion off the record.)

Mr. Freeman: Why don't you offer a photostatic copy and have it marked for identification, and we will keep the original.

Mr. Fidler: I wish to have the reporter mark, with the consent of Mr. Freeman, a photostatic copy of this letter of November 11, 1940, for purposes of identification as Plaintiff's Exhibit 2, Automotive Exhibit No. 2.

(Document marked by the Notary as Automotive Exhibit No. 2, for identification.)

275 Mr. Fidler: Q. Has any agreement, other than the agreement dated September 28, 1938, been entered into between Snap-On Tools Corporation and Precision Instrument Manufacturing Company or Mr. Larson, in respect to the manufacture of wrenches by Precision Instrument Manufacturing Company?

I hand you a copy of the September 28, 1938 agreement, referred to, which is attached to the Petition filed in this case, as Exhibit 5.

A. I can't be sure, but I think there is an agreement between Precision and Snap-On now. I have a recollection of there being one.

Q. When was that agreement entered into?

A. If there was, I don't know exactly. In fact, I am not sure that the agreement exists, but for some reason or other I have a recollection that one does exist.

Q. Was there not another agreement entered into between Mr. Larson or Precision, or both, and Snap-On, about December, 1940, at the time that the agreements were entered into with Automotive?

A. I don't believe there—

Mr. Freeman: Read that last question, please.

(Question read by the Notary.)

A. Yes, I think there was.

Mr. Fidler: Q. Will you please produce that agreement?

276 (Document handed to the witness by Mr. Freeman, and then handed to Mr. Fidler by the witness.)

Mr. Fidler: Q. By whom was this agreement that you have just handed to me, and which was entered into on December 20, 1940, prepared?

A. I don't know.

Q. I note Mr. Harry C. Alberts' name on the wrapper. Does that refresh your recollection in any way?

A. I still would not know, because I do not believe I was a party to this agreement at all. Yes, I did witness it. (Witness examines said document.)

Mr. Lindsey: The witness looks at the last page.

The Witness: I just witnessed the signatures on here. I did not know what it was all about.

Mr. Fidler: As Secretary and treasurer of the company.

Q. Did you read this agreement before you placed your name on it?

A. No, I didn't.

Mr. Fidler: I would like the reporter to mark, for purposes of identification, a photostatic copy of this agreement, as Automotive Exhibit No. 3.

(Document marked as Automotive Exhibit No. 3, for identification.)

Q. Are there any other agreements of any kind existing, as between Mr. Larson and Snap-On, or Mr. Larson and Precision, respecting torque measuring wrenches man-

277 ufactured by Precision?

A. (The witness, Mr. Carlsen, hands document to Mr. Fidler.)

These are both alike, aren't they?

Mr. Alberts: No. Here is one.

The Witness: Here is one.

(Mr. Carlsen hands another document to Mr. Fidler.)

Mr. Fidler: Q. You have handed to me a copy of a Concession of Priority in Interference No. 77,565, and an assignment, of the Larson Application involved in that Interference, to Automotive, is that correct?

A. That is correct.

Q. I will now ask you again whether or not there are now existing, as between Precision and Snap-On, any agreement of any kind, respecting torque measuring wrenches, other than the agreement, Automotive Exhibit 3 for identification?

Mr. Freeman: Let the record show that there have been just handed to Mr. Lindsey a photostatic copy of the agreement of January 16, 1941, between Precision and Snap-On, and an agreement entitled Rider to Agreement Executed on January 16, 1941, dated the 26th of March, 1942, between Precision and Snap-On.

The photostatic copies omit the prices at which Precision sells the wrenches or torque wrenches to Snap-On.

Mr. Fidler: Please read the question.

278 (Pending question read by the Notary.)

The Witness: I have just handed you those.

(Mr. Lindsey left the hearing room at this point in the taking of the deposition.)

Mr. Fidler: Q. I show you the two copies, agreements handed to me by Mr. Freeman, and call your attention to the signature page of each of them and ask you whether or not it is a fact that neither agreement has been executed by Precision; is that correct?

A. That is correct. However, the originals are.

Q. Are these two agreements, which I just showed you, the only agreements between Snap-On and Precision, and the agreement, Automotive Exhibit 3 for identification, that now exist between those companies?

A. I believe that is all there is. To the best of my recollection, that is all there is.

Q. Are there any agreements, other than these, now existing, as between Mr. Larson and Snap-On?

A. Not that I know of.

Q. Other than the agreement of September 28, 1938, which I showed you a moment ago, and which is Petitioner's Exhibit 5, and these agreements, have any other agreements been executed or entered into between Snap-On and Precision?

A. Not to my knowledge.

Q. Were any oral agreements or understandings
279 entered into between Precision and Snap-On?

A. No.

Q. Were any oral understandings entered into between Mr. Larson and Snap-On?

A. Not that I know of.

Q. Are there any existing written agreements, as between Mr. Larson and Precision Instrument Manufacturing Company?

A. Not that I know of.

Q. Are there any oral agreements now existing, as between Mr. Larson and Precision Instrument Manufacturing Company?

A. Not that I know of.

Q. To whom does Precision sell its wrenches?

A. Snap-On Tools Corporation.

Q. To anyone else?

A. No.

Q. How are the orders from Snap-On to Precision handled, that is, do they pass on orders received from customers, or does Snap-On issue orders under its own order blank, on orders received?

A. Snap-On issues its orders under its own order blanks.

Q. Do you know to whom the wrenches that you sell to Snap-On are sold?

A. No.

Q. Do you ever take any orders from any customer other than Snap-On?

280 A. No.

Q. Is the customer's name ever specified in orders than you receive from Snap-On?

A. On some, yes.

Q. Do you recollect the names of any of those customers?

Mr. Ooms: Just a moment. I don't see that that has anything to do with this lawsuit. I object to that, on the ground that it is absolutely impertinent to any issue in this case.

Mr. Fidler: Certain allegations have been made in the pleading respecting the places or customers or kinds of customers to whom these wrenches are sold, and I think that this inquiry is perfectly proper in view of it.

Mr. Ooms: Not the names of those customers. The character of them. What is the question?

(Pending question read by the Notary.)

Mr. Ooms: What was the preceding question?

(Record read by the Notary.)

Mr. Ooms: I instruct the witness not to answer any question about names of customers.

Mr. Fidler: Do you so refuse to answer?

The Witness: Yes.

Mr. Fidler: Q. Do you know the character of the customers to whom Snap-On sells its wrenches?

The Witness: Do you mean the character of the 281 customers, the type of business or—

Mr. Fidler: Yes.

A. The United States Army.

Q. Is that all?

A. Oh, there are some of these—some go to the United States Navy.

Q. Is that all?

A. That is about all, that is about all that are really ear-marked for any one particular spot.

Q. That is all that you know of?

A. Yes.

Q. Do you, or Precision I mean, make one or more than one kind of wrench for Snap-On? I am not talking about sizes. I am talking about construction of wrenches.

A. Construction of wrenches—We make two different types, one a ratchet type, and the other is plain without a ratchet.

Q. Are those the only differences?

A. That is the only difference, yes.

Q. That is, the ratchet is the only difference?

A. That is the only difference.

Q. Why was this contract, Automotive Exhibit No. 3 for identification, entered into?

The Witness: It—is there, isn't it?

Mr. Freeman: Here it is. (Mr. Freeman hands document to the witness.)

A. Well, I wouldn't know, when I got through 282 reading this thing, I wouldn't know any more about it than before I even saw it, but I imagine it is because the Snap-On Tools wanted to give the patent back or release the patent so that Larson could assign it over to AMMCO.

Mr. Fidler: Q. Well, did Snap-On Tools Corporation know about the false nature of the testimony given in the Interference, at the time they entered into that agreement, Automotive Exhibit No. 3 for identification?

A. I don't know.

Q. Well, did they know about that before the agreement was entered into with Automotive by Precision?

The Witness: I don't know what you mean?

Mr. Fidler: Q. Did Snap-On know about the false nature of the testimony before that agreement was entered into?

A. I just said I didn't know.

Q. I am talking about the agreement that Precision entered into with Automotive, did Snap-On know, before that agreement was entered into, about the false nature of the testimony?

A. Why, yes, they knew at the time they were up at your office.

Q. Then, they would also know about it at the time they entered into this agreement?

A. I presume they did. I don't know the date of this agreement, but I presume they did.

Q. Did Mr. Joseph Johnson known it personally?

283 A. Mr. Johnson was at your office at the time and must have known it.

Q. And how about being at Mr. Alberts' office, after that conference in my office?

Mr. Freeman: He has already so testified.

A. Yes.

Mr. Fidler: Is that true?

A. Yes, that is true.

Q. Did you see Mr. Ford put his name on the drawing that Mr. Larson testified about in the Interference?

A. No.

Q. Did you see Mr. Dawson put his name on it?

A. No, sir.

Q. Did you see Mr. Larson put his name on it?

A. No.

Q. Do you know when those names were put on that drawing?

A. No.

Q. When you testified in the Interference, had you gained any knowledge from Mr. Thomasma as to dates that Automotive might prove in the Interference?

A. No.

Q. Had you talked to Mr. Thomasma about any of the wrench work at Automotive?

A. No.

Q. Were you ever in Automotive's plant?

A. No.

284 Q. Were you familiar with the pleadings in this case before they were filed?

A. No.

Q. You didn't have anything to do with that?

A. No; no.

Q. Did anyone ask you for your consent to plead the false nature of the testimony given in the Interference?

The Witness: I don't quite understand that.

Mr. Fidler: Q. Well, in connection with this pending case in which you are now testifying, did anyone consult you respecting alleging that false testimony had been given in the Interference, before any papers to that effect were filed in this case?

A. No, I don't think so; not to my recollection.

Mr. Fidler: I think that those are all the questions I have, but we haven't looked over the correspondence that you have produced.

Mr. Freeman: We offered it to you here a few minutes ago. We gave you the whole file.

Mr. Fidler: But, with respect to that letter, I did not want to take the time then. I thought we better do that, because there may not be any questions or anything I would want to ask respecting them, and I thought I would wait until I asked the questions I had in mind, of the witness, and then—

285 Mr. Freeman: Well, here, we have it here and you can have it now.

(Mr. Freeman hands file of papers to Mr. Fidler.)

Mr. Alberts: I think I will go along.

Mr. Freeman: It won't be of interest—You don't need to stay.

Mr. Alberts: No. Here is that letter.

The Witness: That is the letter requested.

(Whereupon Mr. Alberts left the hearing room.)

(Here followed an intermission during which time Mr. Fidler examines file of documents.)

Mr. Fidler: I have just examined a file of documents handed to me by Mr. Freeman, which I understand he has produced in accordance with the request made by me in my letter to him of—

Mr. Freeman: That is, the request that you made to Mr. Ooms and not to me.

Mr. Fidler: That is right. To Mr. Ooms.

Mr. Freeman: I am just a messenger on that. What I am going to hand you tomorrow is what you request of me.

Mr. Ooms: The letter of April 8th.

Mr. Fidler: (Continuing)—In my letter of April 8th, and I understand that these are all of the documents now available, referred to in my letter.

286 Mr. Ooms: These are the documents, contracts produced earlier in the afternoon.

Mr. Fidler: Of these documents, I would like to mark for purposes of identification and as Automotive's Exhibit 4, an original letter dated October 26, 1938 from Snap-On Tools Corporation to Kenneth R. Larson, the same being signed by E. W. Myers, President.

Mr. Freeman: Why don't you go ahead and offer them, instead of having them marked for identification, and get them in and have it over with?

Mr. Fidler: I think I would rather do it this way.

Mr. Freeman: All right.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 4, for identification.)

Mr. Fidler: I also wish the reporter to mark, for identification, a copy of a letter from Mr. Alberts to Snap-On Tools Corporation with a copy to Mr. Kenneth R. Larson, dated August 15, 1939, as Automotive Exhibit 5.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 5, for identification.)

Mr. Fidler: And I also wish the reporter to mark, for the purposes of identification, and as Automotive Exhibit 6, the original of a letter dated May 25, 1942 from Snap-On Tools Corporation to Precision Instrument Manufacturing Company, Attention of Mr. Kenneth Larson, the letter 287 being signed by W. W. Daniel, Assistant Secretary.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 6, for identification.)

Mr. Fidler: There is one more question I would like to ask the witness:

Q. I hand you the letter marked for identification as Automotive Exhibit 4, and ask you whether or not this is the letter that has been referred to in your testimony as having been received from Snap-On and which you used in connection with the sale of stock for Precision Instrument Manufacturing Company?

A. Yes. This is it.

Mr. Fidler: Those are all the questions that I have.

Mr. Ooms: No questions from this side.

Mr. Fidler: I should say photostatic copies of these, instead of the letters themselves:

Mr. Freeman: Yes.

Mr. Hibben: I take it that you have no cross?

Mr. Freeman: No.

(Whereupon the foregoing deposition of the witness Walter Carlsen was concluded at the hour of 5:20 P.M., on Tuesday, April 13, 1943.)

Signature of Witness.

288 State of Illinois } ss:
County of Cook }

I, Thomas B. Goodwill, a Notary Public within and for the County of Cook and State of Illinois, do hereby certify that Walter Carlsen was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that the foregoing deposition given by him was recorded by me stenographically and by me reduced to typewriting.

I further certify that the foregoing transcript of said deposition is a true record of the testimony given by the said witness, Walter Carlsen.

I further certify that said deposition was taken at the time and place specified in the written Notice of Taking Depositions and that the taking of said deposition commenced at the hour of 2:00 o'clock P. M., Central War Time, Tuesday, April 13, 1943, and was completed at about the hour of 5:20 o'clock P. M., Central War Time, in the afternoon of the same day and date.

I further certify that Messrs. Raymond E. Fidler, Esq., Harry W. Lindsey, Jr., Esq., George N. Hibben, Esq. and A. J. Smith, Esq. appeared as attorneys and counsel on behalf Automotive Maintenance Machinery Co.; that Casper W. Ooms, Esq. appeared at attorney for Precision Instrument Manufacturing Company and Kenneth R. Larson; and that Will Freeman, Esq. and Harry C. Alberts,
289 Esq. appeared as attorneys on behalf of Snap On Tools Corporation; and that each of said attorneys were present during the giving of testimony by the said Walter Carlsen during the afternoon of Tuesday, April 13, 1943.

I further certify that certain documents were marked by me as Automotive Exhibits Nos. 2 to 6, inclusive, for identification, during the taking of said deposition, and that, pursuant to oral agreement made by counsel for Au-

tomotive Maintenance Machinery Co. and Snap-On Tools Corporation, respectively, on Wednesday, April 14, 1943, said documents were retained by counsel for Snap-On Tools Corporation for the purpose of making and furnishing photostatic copies of said Automotive Exhibits Nos. 2 to 6, inclusive, to be offered for identification in lieu of the originals of said documents, with the same force and effect as though the originals were offered for indentification.

I further certify that I am not an attorney or counsel for any of the parties, or a relative or an attorney or counsel connected with the action in controversy, or financially interested in said case.

In witness whereof, I have hereunto set my hand and affixed my Notarial seal on this 8th day of May, A.D. 1943.

Notary Public within and for the County of Cook and State of Illinois.

My commission expires April 24, 1945.

290 SUPPLEMENTAL CERTIFICATE.

State of Illinois }
County of Cook } ss:

I, Thomas B. Goodwill, a Notary Public within and for the County of Cook and State of Illinois, do hereby certify that I requested the witness Walter Carlsen to read and sign his foregoing deposition given before me on April 13, 1943, at Chicago, Illinois, in the cause entitled Automotive Maintenance Machinery Co., Plaintiff, *vs.* Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation, Defendants, Civil Action No. 4382 in the United States District Court for the Northern District of Illinois, Eastern Division, and that the said Walter Carlsen refused to sign his said deposition on the ground that it might incriminate him.

I further certify that the attached transcript of the said deposition of Walter Carlsen consists of pages 1 to 81, inclusive, and the notarial certificate (pages 82 and 83).

In witness whereof, I have hereunto set my hand and affixed my Notarial seal on this 15th day of May, A. D. 1943.

Thomas B. Goodwill,
Notary Public within and for the
(Seal.) *County of Cook and State of Illinois.*

My commission expires April 24, 1945.

291. Deposition of Joseph Johnson taken in the above-entitled cause by the Automotive Maintenance Machinery Co., before Thomas B. Goodwill, a Notary Public of Cook County, Illinois, on Wednesday, April 14, 1943, at Suite 1400 Field Building, 135 South LaSalle Street, Chicago, Illinois, pursuant to Notice and proof of service shown thereon.

292 State of Illinois } ss:
County of Cook }

JOSEPH JOHNSON, called as a witness by the Automotive Maintenance Machinery Co., Plaintiff, being first duly sworn by the Notary Public, was examined and testified as follows:

Examination by Mr. Fidler.

Q. Please state your name?
A. Joseph Johnson.
Q. Your age?
A. Nearing forty-nine.
Q. Your residence?
A. 4202 Taft Road, Kenosha, Wisconsin.
Q. And your occupation?
A. Manufacturing executive.
Q. Of what company?
A. Snap-On Tools Corporation.
Q. Of Kenosha Wisconsin?
A. Yes, sir.
Q. What executive office do you hold in that company?
A. President.
Q. How long have you been president of Snap-On?
A. Since the spring of 1939.
Q. And who was president prior to that time?
A. Mr. E. W. Myers.
Q. What executive position did you hold in Snap-On prior to that time?
A. Vice President.
Q. —before you became president?
A. And treasurer.
293 Q. Do you know Kenneth R. Larson?
A. I do.

Q. How long have you known him?
A. Oh, I would say for approximately five years.
Q. Under what circumstances did you first meet him?
A. I met him through some of the associates in the office, at about that time.
Q. What associates?
A. I met him through Mr. Myers.
Q. Anyone else?
A. Also through a Mr. Allen G. Howes, formely with the sales department.
Q. Do you know whether Mr. Larson has any relative employed by Snap-On?
A. I do not.
Q. Whether he had in 1938?
A. I do not.
Q. Are you familiar with the Third Amended Petition for Declaratory Decree filed on behalf of Snap-On Tools Corporation in this case?
A. I probably am, but I don't know what the document is.
Q. I hand you a copy of a document which appears to be a copy of the Third Amended Petition which is referred to in my previous question, and ask whether or not you are familiar with this paper? That is a copy I have with me.

294 (Mr. Fidler hands said document to Mr. Freeman and after Mr. Freeman and Mr. Alberts examined said document, Mr. Freeman handed it to the witness.)

Mr. Freeman: That is a copy that your office made?
Mr. Fidler: Yes.
Mr. Freeman: I mean that is not a copy like the one that is on file, like a duplicate orginal?
Mr. Fidler: No. It is a copy made in our office from the copy served upon us, of the Third Amended Petition.
A. Yes, I believe I am familiar with that.
Q. Did you approve of the filing of that Petition, before it was filed?
A. I believe so. I can't definitely say.
Q. Well, were you consulted in respect to it, before it was filed?
A. I probably was.
Q. Well, do you have any recollection about it?
Mr. Freeman: If you are asking whether that is an act of Snap-On, we will concede that it is.

Mr. Fidler: I am asking whether or not the witness had any personal knowledge of it, at the time it was filed or prior to the time it was filed.

A. I would say yes, I did.

Q. Now I call your attention to paragraph (30) of that Petition and to the part thereof that reads as follows:

"Petitioner alleges that the application eventuating into Letters Patent No. 2,279,792 was declared by the 295 United States Patent Office to be in interference with the applications for Letters Patent Nos. 2,283,888 and 2,269,503; that said interference was identified in the United States Patent Office as No. 77,565 and was a proceeding in which the question to be determined was whether or not the party Larson had invented the subject matter of certain counts of said interference prior to the party Zimmerman; that pursuant thereto in October 1940, testimony of Larson and several witnesses in behalf of Larson was taken under oath at Chicago, Illinois, before Esther Meltzer, a Notary Public commissioned in the State of Illinois;"

Are those statements correct?

A. I believe they are.

Q. Well, you had personal knowledge of such an interference, did you not?

A. I probably did.

Q. You haven't any recollection?

A. No doubt it was called to my attention.

Q. Then, paragraph (30), that I have been reading from, further states:

"that Kenneth R. Larson, one of the witnesses, did then and there falsely testify on his own behalf under oath that he had invented and made a wrench embodying the subject matter of the counts then in interference in the year 296 1934, and that he had produced several models which he identified, and a drawing which he testified as having been made prior to the summer of 1936, whereas in fact the wrenches, models, and drawings referred to had not been made until the years 1937 and 1938;"

Is that statement true?

A. I have since learned that it is, yes.

Q. When did you first learn that that statement was true?

A. Late in the fall of 1940, I believe it was, I was called by Mr. Alberts to attend a conference at your office, at which time you presented some evidence disclosing testi-

mony on the part of one of your witnesses that certain facts were not as reported or testified by Mr. Larson. That was the first knowledge that I had of it.

Q. Well, at that time, did you know that facts had been testified to by Mr. Larson and his witnesses?

A. I did not.

Q. Well, how did you know that was contrary to the facts that had been testified by Mr. Larson and his witnesses?

A. Because that was brought out in questioning, in your office.

Q. In what way?

A. You had there a man by the name of Thomasma that Mr. Alberts questioned, and who refused testi-
297 mony that Larson had given.

Q. Mr. Alberts questioned him?

A. Yes, he did.

Q. Well, what facts did Mr. Alberts bring out from Mr. Thomasma?

A. One of the things had to do with a drawing covering the conception of the tool.

Q. Is that all that you recollect?

A. And also that he had been connected with Larson in some of his endeavors and he also, speaking now of Thomasma, was an employee of the Automotive Maintenance Machinery Company.

Q. Is that all you can recollect?

A. You mean with respect to Mr. Alberts' interrogation of Thomasma?

Q. Yes.

A. Well, I believe that covered some of the essentials.

Q. Now, when was it that that conference was held at my office, at which time Mr. Thomasma was questioned?

A. It was late in the year 1940, November I believe.

Q. Do you know what date it was in November?

A. I believe it was the last week in the month.

Q. And who was present at that conference?

A. Well, we will start with you. We came there to
198 see you originally. And Mr. Alberts and myself were there. Later on, Mr. Wacker and Mr. Allen came in, and there was another party that I didn't see enter the office, whom we later met, and that was this fellow Thomasma, or whatever his name is.

Q. Weren't Mr. Wacker and Mr. Allen there at the time that you and Mr. Alberts came in?

A. No. They came in a little bit later.

Q. And was there any conversation of any kind before they came in?

A. I do not believe so, no, nothing other than preliminaries. They followed rather shortly after we got there.

Q. Nothing was said about the case or any of the evidence, or Thomasma, or anything?

A. Well, at the time, Mr. Alberts did have one statement that he made to you, and that was that both he and I were there principally—or I should say solely in the interests of Snap-On Tools.

Q. And do you remember any statement that you made respecting also that you were there with clean hands?

A. Yes, sir.

Q. How did you happen to make that statement?

A. Well, I made that statement when some reference was made by you that Snap-On's hands were not too
299 clean in this whole picture. There was some inference or insinuation on your part that we were doing something adverse—

Q. Adverse to what?

A. Well, I don't know. It was your accusation at the time.

Q. Something adverse to Automotive?

A. Yes, as I recall it, that Mr. Wacker had spent considerable money on this patent and that our attitude or action was delaying it at the time.

Q. And any reason given with respect to delaying it, by me or anyone else?

A. Well, at that time, as I recall it, Mr. Alberts said that if this testimony or evidence turned up by Thomasma would be supported, that he would immediately withdraw as attorney for Precision.

Q. What had your prior relations, prior to that conference, with Automotive been?

A. Well, in a sense I am sorry that question came up, because Vic Allen and I had been pretty good friends. I looked forward to it, originally, to be on that high plane of our previous friendship, but, I can say here for the record that our relationship with Automotive was not considered satisfactory by us.

Q. What had been that relationship?

300 The Witness: You are speaking now of a previous relationship?

Mr. Fidler: Yes.

A. It was strictly a personal relationship between Vic Allen and myself.

Q. Did Automotive have any dealings with Snap-On prior to the conference that you have been talking about?

A. The one in your office?

Q. Yes.

A. Yes, we did.

Q. What were those dealings?

A. Well, Mr. Allen called me originally, and I don't recall at what time this took place, asking if we would be interested in manufacturing for them adapters for their Torqometer—I mean their tension measuring device. That I believe was our first relationship with them, in a business way.

Q. And did that relationship continue after that?

A. I don't recall now. We may have made a small number of units for them.

Q. Well, isn't it a fact that Automotive made for Snap-On Tools Corporation wrenches which were sold by Snap-On?

A. Yes. That came later.

Q. When did that relationship begin?

301 A. I believe it began in 1937.

Q. Do you remember what time?

A. I do not.

Q. How long did that relationship continue, the supplying of wrenches by Automotive to Snap-On?

A. I wouldn't be venturing only a guess, but I would say that it ran slightly in excess of a year, maybe a year and a half.

Q. Were you being supplied wrenches by Automotive—I mean was Snap-On being supplied wrenches by Automotive at the same time that you were being supplied wrenches by Precision Instrument Manufacturing Company?

A. Not to my knowledge, no.

Q. Was Snap-On being supplied with wrenches by Automotive after Snap-On entered into an agreement with Precision for the manufacture of wrenches?

Mr. Johnson: I would like to have that question read, please.

(Question read by the Notary.)

A. I do not know.

Mr. Fidler: Q. Now going back to that conference in

the last week in November, in my office, about how long were you and I and Mr. Alberts together, before Mr. Walker and Mr. Allen came in?

302 A. I don't recall definitely.

Q. Do you recall anything else that we discussed before they got there?

A. I don't recall.

Q. Now, when Mr. Wacker and Mr. Allen came in, was there any discussion?

A. As to what?

Q. As to any matter at all?

A. Well, as I recall it, I believe that the discussion of the matter in question was commenced when we all got together.

Q. And what was the discussion?

A. It had to do with some new developments that you had in the case.

Q. Well, do you recollect what was said, in that respect? If so, what was it?

A. Well, I believe that the gist of the whole thing was that you had uncovered a witness that had refuted the testimony given by Larson, and that you were prepared to produce him for Mr. Alberts' questioning.

Q. And did you at that time again express the fact that you were there with clean hands?

A. I no doubt did, yes.

Q. And why did you do that, after Mr. Wacker and Mr. Allen came in?

A. Well, I think I mentioned at the time that we had
303 always done business on a very high, clean plane and that the information being disclosed there was something that was certainly not of our knowledge. Furthermore, the inference made by you, that our hands were not clean, probably prompted me to tell you, at the time, that we had been known as a company doing business on a very high plane.

Q. How long were we in conference before Mr. Thomasma came in, do you know?

A. I don't recall.

Q. Do you recollect anything else that was said or discussed before Mr. Thomasma came in?

A. No, I don't recall.

Q. Now, when Mr. Thomasma came into the room, what was done?

A. You probably introduced him. I don't recall whether or not you did, but you did turn him over to Mr. Alberts. I believe that you and Mr. Alberts had had a previous conference, about a week before.

Q. And Mr. Alberts did the examining of Mr. Thomasma?

A. Yes. He asked certain questions.

Q. Are you quite sure of that?

A. I am quite sure of it, yes.

Q. When was the first time that you were informed that the testimony given by Mr. Larson and his witnesses was false?

A. At the day of the meeting in your office.

304 Q. When was the first time that you were informed that the testimony given by Mr. Larson and his witnesses, in the Interference, was possibly false?

A. Well, I believe that Mr. Alberts had had some anonymous call that I remember he reported to me, which came in one time, and then following that, you were in touch with him and said that you had some interesting new facts in the case, and I believe that was a meeting at which he met with you alone.

Q. Do you remember when that was?

A. It was about a week prior to our meeting.

Q. When Mr. Alberts first reported the anonymous call, to you, what did he say. What did Mr. Alberts say to you?

A. Well, he reported that he had an anonymous call. As to the directness of the call or the direct message, I don't recall that, at this moment.

Q. Was that over the telephone?

A. It was over the telephone, as I understand it, yes.

Q. And do you recollect at all what he said, Mr. Alberts, when he called you on the telephone?

A. I believe that in this call some mention was made that the testimony given by Larson was not true testimony.

Mr. Freeman: Are you talking about the anonymous call?

Mr. Fidler: The anonymous call.

305 Mr. Freeman: (Continuing) Or the call I had understood you to say, the call from Mr. Alberts to Johnson?

Mr. Fidler: That is right, in respect to the anonymous call.

Mr. Freeman: Well, just so the witness understands

that he is testifying with respect now to a telephone call received from Harry Alberts.

The Witness: Yes.

Mr. Freeman: And not with respect to some anonymous call which Harry Alberts received.

Mr. Fidler: Q. Now, what did Mr. Alberts tell you, when he talked to you over the telephone, about that anonymous call that Mr. Alberts had received?

The Witness: I have already answered that question.

Mr. Fidler: Q. Well, what was it?

A. That some party called him anonymously and made the statement that the testimony given in the case had not been true.

Q. Is that all that Mr. Alberts said?

A. Well, he probably said more. That is all I recall. That was the gist of the matter.

Q. Were you informed over the telephone by Mr. Alberts in respect to the conference that he had alone with me?

A. No, I don't know what developed in that conference. He said that he had a meeting scheduled with you; that you had asked him to come to your office, which he did.

306 Q. Well, after the conference in my office alone did Mr. Alberts report to you on our conference?

A. He did not, so far as I recall.

Q. Did not Mr. Alberts get in touch with you and tell you that arrangements were going to be made, or had been made, to have Mr. Thomasma come in, so that you could hear what he had to say?

A. I was coming back from Canada, when I received a telegram on the train, asking me to stop off here, and that was the day on which these meetings were held.

Q. Now, during the conference in my office, in the last week in November, at which time Mr. Thomasma was present, were you present during all the time that Mr. Thomasma was talking?

A. If you mean within the presence of the group, yes, but as to presence in your office, no.

Q. Well, during all the time that Mr. Thomasma was telling his story—

A. Yes.

Q. —you were present, were you not?

A. I was, yes.

Q. And after Mr. Thomasma had told his story, what did you do?

A. Well, as I recall, Mr. Alberts at that time said that if the facts or testimony as given by him were correct, that there was only one thing that could be done and
307 that would be to grant a priority of application, or whatever it is, I don't know, concession of priority.

Q. That was said at that meeting in my office?

A. It was, yes.

Q. And who was present when that was said?

A. Mr. Allen, Mr. Wacker, Mr. Fidler, Mr. Alberts and myself.

Q. Do you recollect any remark that you made, after having heard Thomasma's story?

The Witness: With respect to what?

Mr. Fidler: Q. (Continuing.) With respect to what you had heard from Mr. Thomasma?

A. Of course, I believe it was at that time that I did make a statement to the effect that we had always done business on a very clean, high plane, and that that testimony certainly was shocking to me.

Q. Do you recollect saying that "It smells to the high Heavens"?

A. I may have said that.

Q. But, do you recollect that you did?

A. I do not definitely recollect that, no.

Q. Do you recollect what Mr. Alberts said, after having heard Mr. Thomasma's story?

A. I don't recall, other than he probably mentioned that we would have to immediately get in touch with the other parties; also, that if the facts as reported were true,
308 that he certainly would not longer serve as their legal counsel.

Q. Now, you left the conference shortly after Mr. Alberts made that statement, did you not?

A. Probably so, yes.

Q. And did you or Mr. Alberts make any investigation to determine whether or not Mr. Thomasma's story was true?

A. We did.

Q. What was that?

A. Mr. Alberts immediately telephoned the Precision Company and asked for the principals to come in to his office here in Chicago.

Q. And who were they?
A. Larson and Carlsen.
Q. That is, Kenneth R. Larson and Walter A. Carlsen?
A. Yes, sir.
Q. And did they come in?
A. They did.
Q. And do you know why Mr. Alberts had them come in that day?
(At this point in the taking of testimony, Mr. Ooms left the hearing room temporarily.)
A. Well, he can probably answer that. I don't know what was in his mind at the time.
Q. Well, when they did come in, what transpired?
A. Well, Mr. Alberts told him about the conference
309 held in your office, about this man Thomasma and what had taken place, and immediately questioned Larson as to whether or not testimony given by him was true.
(Whereupon Mr. Ooms returned to the hearing room.)
Mr. Fidler: Q. And what did Mr. Larson say?
A. Well, it took a little while before Larson admitted that the testimony he had given was false.
Q. Did Mr. Alberts also talk to Mr. Carlsen?
A. He was directing his remarks principally to Kenneth Larson.
Q. Well, were any remarks directed to Mr. Carlsen?
A. Well, I don't know, but I would assume that in directing them, as they were associates, that it would cover both of them.
Q. What did Mr. Carlsen say?
A. Respecting what question?
Q. Regarding whether or not the testimony that they had given in the Interference was true.
A. No do not recall.
Q. Well, did Mr. Carlsen say anything?
A. No. He was very quiet.
Q. About how long did Mr. Alberts and you discuss this matter with Larson and Carlsen?
A. Oh, it might have been for an hour, or three-quarters of an hour.
Q. Did you question Larson about it at all?
310 A. I believe I did. I certainly was mad enough at the time.
Q. What did you say to Mr. Larson?
A. Well, naturally the same things were going through

my mind that Mr. Alberts no doubt had on his, and that was to check to see whether or not these statements made by Thomasma were correct.

Q. And what did you decide in that respect, as to whether or not they were correct?

A. Well, Larson finally admitted that some of his testimony was false.

Q. Was there any discussion with Mr. Larson as to the testimony of any of the other witnesses that testified on his behalf?

A. No.

Q. Was that the full extent of the investigation that you referred to, that was made?

A. Yes, because he admitted and corroborated what we had heard in your office from your witness.

Q. After you and Mr. Alberts had talked to Mr. Larson and Mr. Carlsen, then what did Mr. Larson and Mr. Carlsen do?

A. Well, they left rather suddenly, I might say.

Q. Do you know why they left suddenly?

A. I believe I do, yes. Mr. Alberts, after Larson admitted that his testimony had in part been false, said to him that he certainly could no longer represent him and that he would have to be represented by other counsel.

Q. And they left to retain other counsel?

A. They went to see someone, yes.

Q. But you did not have anything to do with that?

A. I had nothing whatsoever to do with that.

Q. Did you ever have anything to do with Larson and Carlsen after that time?

The Witness: After what time do you mean?

Mr. Fidler: Q. (Continuing.) After the time that they left the office and went to retain other counsel?

A. No, I didn't see them again for some time.

Q. Did you see them again before the Interference was finally settled?

A. I probably did.

Q. You don't recollect?

A. I don't definitely recollect, no.

Q. Did you see Mr. Larson and Mr. Carlsen again, after that conference in Mr. Alberts' office with them on the day of the conference in my office, prior to the time that you

entered into the Interference settlement agreement with Automotive?

A. I do not recall. I may have seen them.

Q. Was there any necessity for your seeing them?

A. I don't know why. The matter has been in the hands of counsel who has represented us since the 312 year 1926. Likewise, it has been in large part handled by associates.

Q. You recollect, do you not, that in settlement of the Interference, Snap-On and Automotive entered into an agreement about December 20, 1940?

A. Yes, there was an agreement entered into.

Q. I show you a copy of an agreement, which is attached to the Petition filed by Snap-On in this case as Exhibit 4, and ask you whether or not that is the agreement just referred to and which was entered into between Snap-On and Automotive in settlement of the Interference No. 77565?

(Mr. Fidler hands document to the witness.)

(The witness, Mr. Johnson examines said document.)

A. This is not the signed copy, but I have seen it.

Q. That is the agreement, then, that you referred to?

A. Yes.

Mr. Freeman: That is a copy you prepared from the one attached to the Petition?

Mr. Fidler: That is correct, and is subject to correction or checking, if you care to do it.

Mr. Freeman: Well, if you tell us that it is a copy that you made, that is all that is necessary.

Mr. Ooms: The one attached to the Petition is admitted.

Mr. Freeman: Sure.

Mr. Ooms: We have alleged that we executed it.

Mr. Fidler: Q. Who represented Snap-On in the 313 negotiations leading up to this agreement which is Petitioner's Exhibit 4 in this case?

The Witness: The one I have just seen?

Mr. Fidler: Yes.

The Witness: A. It carries the name of Harry C. Alberts, who has been our counsel since 1926 on patent matters.

Q. By Mr. Fidler: And Mr. Alberts represented you in all negotiations leading up to the execution of the agreement, Petitioner's Exhibit 4, is that correct?

A. Yes, he is Snap-On's attorney.

Q. Did you make any contacts with anyone in respect to that agreement, other than with Mr. Alberts?

A. All those matters have been handled through Mr. Alberts. He is our counsel.

Q. Well, was Mr. Alberts the only one, the only attorney that represented you in the negotiations leading up to the conclusion of this agreement, Petitioner's Exhibit 4?

A. I believe so.

Q. Now, after Mr. Larson and Mr. Carlsen left Mr. Alberts' office on the day of the conference in my office, what did you do next?

A. Well, shortly after I got associates together and I asked Mr. Alberts to be present at that meeting and to present to them the entire outline of this development.

I had made the statement to Larson and Carlsen, 314 in Mr. Alberts' office, that from where I sat, so far as I was concerned, I was definitely through with them.

Q. And when did that meeting with your associates take place?

A. Oh, I think it was within less than a week after that.

Q. And at that meeting what was discussed besides the statement that you say that you made to them?

A. I don't quite get your question there?

Q. Well, what was discussed at that meeting, that you had with your associates, after the meeting with Mr. Alberts, Mr. Larson and Mr. Carlsen in Mr. Alberts' office?

A. Well, he outlined what had happened all the way through, and when we got through with it, why, we just decided that we were through with Precision.

Q. Who outlined this?

A. I say Mr. Alberts was there at the meeting.

Q. And he outlined to your associates—

A. He did, exactly what had transpired.

Q. What did he say in outlining the matter to them?

A. Well, it had to do with the matter of the false testimony given by Larson and the fact that many statements made to us were not substantiated in fact.

Q. Made to you by whom?

A. By Larson.

Q. Had you made an effort to substantiate those statements that Mr. Larson had made to you?

315 The Witness: Had we made an effort to?

Mr. Fidler: Yes.

The Witness: Well, I don't know how far we could go with that. What do you mean? What does your question imply there?

Mr. Fidler: Q. Well, Mr. Larson, you say, made certain statements and you had not been able to substantiate them. What statements were those, that Mr. Larson had made?

A. Well, those that he had made in testimony; he said, for example, that he had made a drawing of this thing quite a few years ago and had models made, which later developed to be falsehoods.

Q. And those were the statements by Mr. Larson that you could not substantiate, is that correct?

A. They were, yes.

Q. Now, after the meeting with your associates, at which time Mr. Alberts explained the matter of Mr. Larson's testimony, what did Snap-On do?

A. Well, there was nothing else left to do at the time, and that was to at least let our arrangements run out with the Precision Company.

Q. What do you mean by let your arrangements run out with Precision Company?

A. Well, I mean to follow through on the agree-
316 ments between the various parties. AMMCO did, under the agreement, allow a certain number of tools to be completed that had been on contract for some time, and that is what I refer to when relations were being completed.

Q. That wasn't the next thing that Snap-On did after the meeting with Mr. Alberts and your associates, was it?

The Witness: You are first telling me, and then you are asking me. I don't quite get your question there.

Mr. Fidler: Q. What was the next thing that Snap-On or you and your associates did, after the meeting at which Mr. Alberts explained the Larson situation to them?

A. Well, no doubt our new tools department began an investigation on the market to see what other tension wrenches were available. Likewise, there had been some experimenting going on in their own laboratories.

Q. Well, after that meeting, you entered into negotiations with Automotive, did you not?

A. There were some final papers drawn. You have

them, and I think we have admitted all of them as part of this case, whatever they are.

Q. It is a fact, is it not, that after the meeting between your associates and Mr. Alberts, that you did enter into negotiations with Automotive, is that correct?

A. Yes, with respect to completing the contracts on certain Torqometers.

317 Q. And those negotiations terminated in this agreement, Petitioner's Exhibit 4, is that correct? Mr. Fidler hands document to the witness).

A. Yes, sir.

Q. Well, why did you enter into this agreement, Petitioner's Exhibit 4? By "you" I mean Snap-On Tools Corporation?

A. Well, there was a lot of pressure put on this fellow Larson, you had already produced a witness who said that Larson's testimony was false, and which he admitted, and with some of the threats that were made with respect to the partners in the Precision Company, our corporation released, made the release under this agreement.

Q. What did, what Larson had done have to do with Snap-On?

A. I don't quite follow you on that one?

Q. Why was it necessary for Snap-On to enter into an agreement with Automotive, in view of anything that Mr. Larson had done?

A. You might ask that question of our counsel, who we look to for direction in matters of this kind.

Q. You can't answer the question?

The Witness: Not right at the moment, I can't, no.

Mr. Fidler: Q. You referred to threats in your previous answer, in respect to Mr. Larson. No threats were made to you with respect to Larson, were there?

318 A. No. They weren't, but they were made within my hearing in the meeting we had over at your office.

Q. Where were you when the threats were made?

A. I was right in the office with you, at the time.

Q. And who made such threats?

A. You did.

Q. What was said?

A. You said at the time, that—in other words, you inferred that Snap-On did not have very clean hands, that this whole thing was being held up, and that Mr. Wacker had spent considerable money for the patents and that he

wanted to get some speedy action on it and was ready to unleash the dogs; furthermore, that the testimony given had been discussed with the District Attorney, and that dire threats were held out for both Larson and Carlsen on false testimony.

Q. Those statements were made?

A. They were made, yes.

Q. And made by me?

A. And made by you, yes.

Q. And you swear that to be a fact?

A. Yes, I do.

Q. Now, what else was said?

A. What do you mean, what else was said?

319 At the time that the threats were made?

Well, I don't recall. This all took place in sequence at your office, at the time.

Q. Were you present when those statements were made?

A. Yes, I was.

Q. And it was in my office?

A. It was in your office, yes.

Q. And who else was present at the time?

A. The entire group that we had there, Mr. Wacker, Mr. Allen, Mr. Alberts, I believe Thomasma was in there, I am not definitely sure of him, and myself.

Q. In your previous answer, you said that you inferred that certain threats were made.

Mr. Ooms: He didn't say that.

Mr. Hibben: Yes, he did. I am sorry.

Mr. Lindsey: He did.

Mr. Fidler: Q. Were those threats actually made, or do you infer that they were made?

A. I don't say that—in other words, I can't quote you word for word on this, but at least I got that inference, that you were already to shoot and tear after these two boys.

Q. Now, will you state in as exact words as you can what you say that I said?

A. Well, I tell you, as nearly as I can recall it, it 320 is this: That we didn't entirely have clean hands in it, and I speak now of Snap-On; that was the inference or accusation made by you, and that Mr. Wacker had considerable money in these patents, and that he wanted to get some action, and that he was ready to unleash the dogs.

Q. Anything else said?

A. Reference was also made to the statement that this

perjured testimony could be or would be turned over to the District Attorney.

Q. Anything else said, that is, by me?

A. I don't recall.

Q. Was anything said by Mr. Wacker?

A. No. Not a great deal. I don't recall his exact words at the time.

Q. Was anything said by Mr. Allen?

A. No, sir.

Q. Do you recollect that you said that you had never heard of Mr. Thomasma before?

A. I did, yes, sir.

Q. Do you recollect that Mr. Thomasma turned around to you and said that he was surprised because he had been at your plant several times?

A. I don't know why there should be any surprise. I don't see everybody that comes into that plant.

321 Q. But do you recollect that he said that to you?

A. He may have. I don't know whether he did or not.

Q. You do not recollect?

A. I do not, no.

Q. Was anything else said at that conference at my office, that you think of?

A. I think I have enumerated what I considered were the essential points brought out at the time.

Q. Well, what was the basis of the decision that you made yourself, in my office that day, when you heard Mr. Thomasma's story?

A. Well, that was that if his testimony was supported that we certainly would grant concession of priority.

Q. Who made the decision as to the granting of priority to the party Zimmerman, in the Interference?

The Witness: Are you speaking now of the conversation in your office?

Mr. Fidler: No.

The Witness: Because Mr. Alberts told you, at that time, the same as I have just said, that if that testimony is supported, then he would recommend and would grant a concession of priority.

Mr. Fidler: Q. Well, you know that a concession of priority was given by Mr. Larson to Zimmerman, in Interference No. 77,565, do you not?

322 A. Well, if there was, if has been given, if it is in the records.

Q. You don't know that fact, of your own knowledge?

A. Probably I do.

Q. Who made the decision, that priority should be given to Mr. Zimmerman by Mr. Larson in that Interference?

A. We probably acted upon advice of counsel.

Q. Was that decision made in the meeting with your associates, at that time when Mr. Alberts explained the situation?

A. I don't recall whether it was in that meeting or not, to be frank.

Q. Well, was there any other meeting?

A. I referred to the meeting in which we called Larson and Carlsen.

Q. Oh, you decided at that time, that you should give it?

A. I may have tentatively told Mr. Alberts. No doubt he strongly advised it and recommended it, and I subscribed to it.

Q. At the time that Mr. Alberts called you and said that he had this anonymous call about the testimony in the Interference, did you instruct Mr. Alberts to make investigation in that respect, at that time?

A. I don't know how he could make one, on an anonymous call.

323 Q. Did you instruct him to make an investigation, at that time?

A. Not that I recall.

Q. Do you know whether any investigation was made by Mr. Alberts or anyone else, at that time?

The Witness: As to the anonymous call?

Mr. Fidler: Yes.

A. I don't recall.

Q. After you had talked to Mr. Larson and Mr. Carlsen, in Mr. Alberts' office, did you or Mr. Alberts talk to any of the other witnesses that had testified on behalf of Mr. Larson?

A. I don't know of a single witness in the case; I don't know of a single one, no.

Q. Did you or Mr. Alberts talk to any of Mr. Larson's witnesses in the Interference, after being advised with respect to the anonymous call?

A. No, sir. I have never met or seen them; I don't know any of them.

Q. Did you or Mr. Alberts talk to Mr. Larson, after that anonymous call and before the conference in my office?

A. I doubt it very much.

Q. Well, do you know for sure?

The Witness: Will you restate that for me, please?

Mr. Fidler: Q. After you had been advised by
324 Mr. Alberts respecting the anonymous call, and prior to the time of the conference in my office, did you make any investigation by talking to Mr. Larson, respecting the anonymous call?

A. I didn't do it personally, no.

Q. Did Mr. Alberts?

A. I can't speak for Mr. Alberts.

Q. Did Mr. Alberts tell you the purpose of the conference that he had alone, in my office, with me, about a week before the conference at which you were present?

A. No. The only thing I knew is that you had some interesting new evidence or information.

Q. Did you instruct Mr. Alberts, at that time, to make an investigation in respect to the testimony given in the Interference; I mean after he told you he was going to have a conference with me?

A. I don't know, on that one.

Q. Well, Mr. Alberts advised you that he was going to have a conference with me alone?

A. I understood that he was going to your office, yes.

Q. And he told you that it was in respect to some facts that had developed in connection with the Interference?

A. Yes.

Q. And did he tell you that it had to do with facts
325 that might show the information given by Larson and his witnesses to be false?

A. No, not at that time.

Q. Do you know whether or not Mr. Alberts made any investigation of the testimony of Mr. Larson and his other witnesses, after having so advised you respecting the conference with me?

A. I don't think he did.

Q. Now, again referring to paragraph (30) of Snap-On's Petition filed in this case, it states, "that respondent and its agents were aware that said testimony and evidence were false,"—What is the basis of that allegation?

A. This was (Witness indicates document)— You better check that with the attorney representing us in the case, Mr. Alberts.

Q. Well, you approved of this Petition, did you not?

A. I probably did.

Q. Prior to the filing of the Third Amended Petition in this case, there was filed an original petition, an amended petition, a first amended petition and a second amended petition.

Mr. Ooms: Has the reporter got that straight?

Mr. Fidler: Q. There were filed an original petition, a first amended petition and a second amended petition. You verified those first three petitions, did you not?

A. I probably did.

326 Mr. Freeman: Isn't the record here the best evidence, whatever the record shows, as to his verification?

Mr. Lindsey: We haven't the original pleadings. Here is a copy that bears the signature of Harry Alberts. Ask them if they will admit that.

Mr. Freeman: Well, any paper that has been filed we will admit.

Mr. Fidler: The original petition, according to the copies in my files, as well as the first amended petition and the second amended petition, were signed by Joseph Johnson, as president of Snap-On Tools Corporation, and by Mr. Harry C. Alberts as attorney for Snap-On.

Mr. Lindsey: Is that Johnson's signature?

Mr. Freeman: That isn't Johnson's signature, but we will concede that the copy that was filed had Mr. Johnson's signature on it, because that is the original signature of Harry C. Alberts.

Mr. Lindsey: And the verification by Mr. Johnson?

Mr. Freeman: If the pleadings show that it was verified by Mr. Johnson, we will concede that it was verified and signed by him, yes.

Which one did you show me there? I am making that concession only with respect to the one you showed me.

Mr. Fidler: That is the second amended petition.

327 Mr. Freeman: That is right.

Mr. Fidler: Q. I will also show you copies of the original petition served upon Automotive.

(Mr. Fidler shows document to Mr. Freeman.)

Mr. Freeman: This is the copy that you got?

Mr. Fidler: This is the copy that was served upon us.

Mr. Freeman: All right. Yes, we will concede that that was signed—

Mr. Fidler: That is the original petition.

Mr. Freeman: —that that was signed and verified by Mr. Johnson.

Mr. Fidler: And the amended petition I have referred to as the first amended petition was also signed and verified by Mr. Joseph Johnson, and also by Mr. Harry C. Alberts, Attorney for Snap-On, and verified by Mr. Johnson.

Mr. Freeman: Correct.

Mr. Fidler: Q. As I understand it, then, you do not know the basis for the allegation "that respondent and its agents were aware that said testimony and evidence were false," is that correct?

The Witness: Will you read that question?

(Pending question read by the Notary.)

Mr. Lindsey: The "respondent" there is Automotive.

The Witness: You say that "respondent" there is
328 Automotive?

Mr. Fidler: Yes.

A. Well, in here he has been so charged, and I am familiar with that.

Q. Well, this pleading alleges (I am referring to Snap-On Third Amended Petition) "that respondent," that is Automotive "and its agents were aware that said testimony," that is the testimony given by Larson and his witnesses, "and evidence were false." Do you know the basis of that statement in this pleading?

A. As to how you obtained the evidence that Larson's evidence was false?

Q. I am asking you what you, as an individual, can say as to the basis of that allegation in this pleading?

A. Well, I have got to refer back to the meeting held in your office, where you produced the witness Thomasma, and at our later conference with Larson and Carlsen in Mr. Alberts' office, where Mr. Larson admitted, finally admitted that the testimony in part was false.

Q. Was I present at that meeting in Mr. Alberts' office, when Mr. Larson and Mr. Carlsen admitted it?

A. You were not.

Q. Was anyone from Automotive present?

A. They were not.

329 Q. Did you or anyone from Snap-On ever tell me that Mr. Larson had so admitted?

A. I don't know.

Q. Well, did you ever tell me?

A. I didn't tell you, no.

Q. Did you ever tell anyone of Automotive that Mr. Larson had so admitted?

A. I haven't had direct contact either with you or Automotive, or anyone else, in this case.

Q. And you cannot say that anyone representing Snap-On, from your own knowledge, ever told me that Mr. Larson had admitted that that testimony is false; isn't that correct?

A. Well, I don't know what the procedure is between attorneys, but I presume that you are kept informed, one to the other, as to the developments.

Q. But you cannot say that I was informed, from your own knowledge?

A. I cannot say that, no.

Q. In that allegation that I just read to you, it states "respondent," or Automotive, "and its agents." Who are the agents there charged?

A. You will have to check with counsel on that.

Q. You don't know?

A. I don't know.

330 Q. The Third Amended Petition filed by Snap-On further alleges:

"and charged said Larson with the crime of perjury and threatened to institute prosecution against said Larson unless Larson and the Precision Instrument Manufacturing Co. transferred to respondent," that is Automotive, "the Larson patent application and the sum of Five Hundred ($500.00) Dollars and executed the agreement identified herein as Exhibit 6." What is the basis of that allegation?

A. That is probably a matter between you attorneys.

Q. You don't know?

A. I don't know. That is the precedure between the two legal forces.

Q. It is further alleged, in Snap-On's Third Amended Petition: "and in consideration thereof respondent," that is Automotive; "promised to withhold its information and complaint and, further, would suppress the evidence of said perjury;" what is the basis of that allegation?

A. I am personally not familiar with that.

Q. It is further alleged in paragraph (30), of Snap-On's Amended Petition, "that the said Larson patent application and certain rights thereunder were at that time held by petitioner under an agreement attached hereto and identified

as Exhibit 5; that in order to procure Larson's release
331 under the Exhibit 5 agreement from petitioner," that is, Snap-On, "respondent," that is, Automotive, "also threatened and its attorney who was then acting as attorney for Larson in the aforesaid interference with the crime of possessing and concealing knowledge of the commission of said perjury by Larson and others in his behalf * * * and with action for alleged civil and criminal conspiracy to defraud and damage respondent," that is, Automotive, "by unwarrantedly delaying the issuance of its patents with perjured testimony and evidence fostered or intended to be fostered upon the Patent Office;"—In reading from the Third Amended Petition, I have omitted reference to the title of the U. S. Code mentioned.

Will you please state the basis of the statement or the allegation that I have just read from the Third Amended Petition?

A. I say there again is a matter that probably developed in the relationship between the several attorneys.

Q. What attorneys?

A. I am speaking now of your firm and Mr. Alberts.

Q. And that relationship did not exist between any
332 officer or representative of Snap-On and our firm, or the firm of Davis, Lindsey, Smith & Shonts, is that correct?

A. Nothing directly.

Q. Nothing except through Mr. Alberts, is that correct?

A. Whatever may have transpired between the two of you.

Q. Was between Mr. Alberts and ourselves, is that correct?

A. Yes.

Q. It is further alleged, in paragraph (30) of Snap-On's Third Amended Petition, "that notwithstanding the fact that petitioner and its attorney had no knowledge that the said testimony and evidence by and on behalf of Larson was not the whole truth until so informed by respondent's attorneys, the latter nevertheless continued its threats of prosecution against petitioner, its attorney, Larson and others; that said threats were repeated to a point that petitioner was coerced to cooperate with Larson and Precision Instrument Mfg. Co. and to subscribe to the respondent's," that is, Automotive's, "terms that were simultaneously tendered in the form of the Exhibit 4 and 6 contracts;"

what is the basis of those allegations in the Third Amended Petition?

A. That again would have to be answered by counsel, because it is between counsel for both sides.

Q. Well, is it correct or true, that Snap-On and its attorney had no knowledge that the testimony and
333 evidence by and on behalf of Larson was not the whole truth until so informed by Automotive's attorneys?

A. We certainly did not know until so informed.

Q. Well, what did the telephone call from Mr. Alberts to you respecting the anonymous call mean?

A. Well, that was an anonymous call, pure and simple. I didn't take the call myself. It wasn't made to me.

Q. It didn't mean anything to you, then, is that correct?

A. Well; it hadn't— Do you put any stock in any anonymous calls?

Q. I am asking you whether or not that anonymous call, that Mr. Alberts referred to, meant anything to you, or whether you just ignored it?

A. I don't know. It probably came out of a clear sky. I don't know anything about it.

Q. Well, you did ignore it?

A. So far as I was concerned, yes. What Mr. Alberts did about it, you will have to check with him on.

Q. Did anything that I may have said to Mr. Alberts, in the conference that I had alone with him, have anything to do with knowledge that you or Mr. Alberts gained in the matter?

The Witness: Gee, I don't—it is a rather—

Mr. Fidler: I will put it this way—

The Witness: Put it plainly.

334 Mr. Fidler: Q. Did my conversation alone with Mr. Alberts mean anything to you or Mr. Alberts?

A. I don't know. I can't say what it meant to him, and I was not at the conference.

Q. Well, were you interested in finding out what was said at that conference?

A. I probably was, but I was away in Canada that week. I didn't see him until a week following.

Mr. Fidler: Mr. Freeman, is this a good place to stop for luncheon?

Mr. Freeman: Oh yes.

Mr. Fidler: I think it is a good place; and what time would you prefer to get back? It is about ten minutes to one o'clock now.

Mr. Freeman: How much longer are you going to be?
Mr. Fidler: Well, probably a half hour.
Mr. Freeman: Is that all?
The Witness: Why don't we go through with it, now, then?
Mr. Freeman: No. Let us have luncheon. You know we can chat with him during the luncheon hour, too. There is no harm with our eating with him, is there?
Mr. Lindsey: No.
Mr. Fidler: No.
Mr. Freeman: Make it two o'clock.
Mr. Fidler: That is all right.
335 Mr. Freeman: Is that all right with you fellows?
Mr. Fidler: That is O. K.
Mr. Freeman: All right.
(And thereupon at about 12:50 o'clock P. M., on Wednesday, April 14, 1943, a recess was taken until 2:00 o'clock P. M. of the same day, Wednesday, April 14, 1943.)
(The taking of the deposition of Joseph Johnson, called as a witness by the Automotive Maintenance Machinery Co., Plaintiff, was resumed at about 2:07 o'clock P. M., on Wednesday, April 14, 1943, following the recess as aforesaid, at Suite 1400, 135 South La Salle Street, Chicago, Illinois.)

336 JOSEPH JOHNSON, having been previously duly sworn, before the commencement of his testimony, resumed the witness chair, was examined and testified further, as follows, to-wit:

Examination (Continued) by Mr. Fidler.

(Mr. Fidler hands copy of Third Amended Petition for Declaratory Decree to the witness.)
Q. I again call your attention to that part of paragraph (30), of Snap-On's Third Amended Petition, which reads, "the latter", that is referring to Automotive's attorneys, "nevertheless continued its threats of prosecution against petitioner, its attorney, Larson and others:"
What threats were made against Petitioner, that is, Snap-On.
A. I have a letter here that I would like to refer to, that may have some bearing on this. (Witness Johnson produces document.)

Q. What letter is that?

A. I am referring now to a letter dated December 19th, on the stationery of Davis, Lindsey, Smith & Shonts, and addressed to Mr. Harry C. Alberts of 38 South Dearborn Street, Chicago, Illinois, and copy of which
337 you direct sent to my attention. I believe that is one of the threats referred to in the paragraph (30) just referred to by you.

Q. May I see the letter, please?

(Whereupon the witness, Mr. Johnson, handed said letter to Mr. Fidler.)

Q. Will you please point out in this letter, which you have just produced—rather, it is a copy of a letter—

Mr. Freeman: Well, it is an original letter signed by Harry W. Lindsey; so it is not a carbon. It is an original carbon.

Mr. Fidler (Continuing): Q. Point out in this letter the threats that you referred to, if any appear therein, as having been made against Snap-On?

The Witness: I did not draw up this Third Amended Petition for a Declaratory Decree.

Mr. Lindsey: Just answer the question, Mr. Johnson.

The Witness: Well, I am answering the question here.

Mr. Fidler: Q. The question is, please point out in this letter of December 19th, 1940, which you have just produced, any threats against Snap-On?

The Witness: I ask you to have our attorney point that out.

Mr. Fidler: Q. Well, can you do so?

A. I am not going to do it. I did not draw this Petition for Declaratory Decree. It was drawn by the attorney.
338 Mr. Freeman: Mr. Johnson, just take a look at this letter.

Mr. Lindsey: Just a minute, now. Let us ask the witness if they didn't produce that as being one of the threats.

Q. Didn't you produce this as being one of the threats?

Mr. Freeman: Let us not argue this case now, Mr. Lindsey.

Mr. Hibben: Who is arguing, Mr. Freeman?

Mr. Lindsey: Q. You produced it as being one of the threats, didn't you?

A. I said that no doubt when this was written, this was part of it.

Mr. Lindsey: Well, I think this evasion and innuendos around here ought to cease now.

Mr. Freeman: I thought they did cease when Mr. Johnson told Mr. Fidler that he was the one that made the accusation against Snap-On.

Mr. Lindsey: Now Mr. Freeman, let us get this on the record. Let us revert to yesterday.

Mr. Freeman: All right.

Mr. Lindsey: I did not catch an inference which you and Mr. Ooms apparently intended to make, about a certain original letter, that was in the discussion yesterday, and I want to know now, on the record, whether you are
339 inferring that Mr. Fidler or I have the original of that letter?

Mr. Freeman: I thought the witness answered you, as to where the letter was.

Mr. Lindsey: It was you and Mr. Ooms that made some inferences. Now, were there any inferences there that we had the original of that letter?

Mr. Freeman: No. I don't know whether you have it or not.

Mr. Lindsey: Then, you did not mean to infer that we did have; either you or Mr. Ooms?

Mr. Freeman: All I know is that you knew about that letter, before you had any meeting with Mr. Alberts, and prior to December 19th, 1940, you knew about the letter.

Mr. Lindsey: When I said I wanted the original letter, you said that we could produce it. Now, did you infer that I had that letter?

Mr. Freeman: No.

Mr. Lindsey: O. K.

Mr. Freeman: But I do want to state on the record that you knew about it, or that your office knew about it.

Mr. Fidler: Read the question, please.

(Pending question read by the Notary.)

A. I think that the best answer to that question
340 would be to consider it answered in Mr. Alberts' letter of the 19th, which answered this letter of Davis, Lindsey, Smith & Shonts, letter of the same day.

Mr. Lindsey: Ask him exactly where, in that letter, there was any threat against Snap-On.

Mr. Fidler: Q. I ask you again for you to state personally where in the letter of December 19th, 1940, there is any threat against Snap-On?

A. Well, I might start out here with this paragraph: "In the second place, we do not believe that you can divest yourself of all responsibility in this matter."

Q. You consider that as a threat?

A. No. This letter is directed to Harry C. Alberts. You are asking me a question here as to whether or not it is a direct threat to the Snap-On Tools Corporation. This letter is not directed to the Corporation, but to the attorney.

Q. But you produced that letter as one of the threats against Snap-On. Now, you retract that, is that correct?

A. I do not retract. I say I didn't write this, and he presumably used that in there. I am not an attorney; I don't draw these things. I don't know the legal phraseology.

Q. You have said that that letter contains threats—
341 a threat against Snap-On. Point out in that letter there where there is any threat against Snap-On?

Mr. Freeman: Are you distinguishing between Snap-On and its attorney, in that question?

Mr. Fidler: I will come to that, Mr. Freeman.

Mr. Freeman: No. The witness is entitled to know whether you are referring to Mr. Alberts and Snap-On indiscriminately as one and the same.

Mr. Fidler: I am referring to Snap-On Tools Corporation, one of the parties to this suit.

Mr. Freeman: As distinguished from Harry Alberts, its attorney?

Mr. Fidler: Yes.

A. My answer would, then, be that since this letter is not directed to us, that the threat has not been directly directed to the Corporation—

Q. Is there any threat in that letter of December 19th indirectly directed to the Corporation?

A. Since it all has to do with the case, there may be.

Q. Well, can you find any?

A. I don't know why I should be asked to make the analysis of it.

Q. Well, you produced it in answer to the question as to what threats were made against Snap-On.

A. I said this letter probably could have some bearing on it.

342 Mr. Freeman: Isn't the letter the best evidence? The letter speaks for itself and he has produced it in answer to the question that he produce a document sub-

stantiating the allegation of the complaint. He has produced this letter.

Mr. Lindsey: If the witness says it is night, can't you cross-examine him and prove it is day?

Mr. Freeman: Well, this letter is still the best evidence.

Mr. Fidler: The witness has made a statement under oath, and he has produced the letter.

Mr. Lindsey: Have him answer the question.

Mr. Fidler: And I want the question answered.

The Witness: You better read that.

I think I have already answered it.

Mr. Lindsey: Restate the question again, Mr. Fidler.

Mr. Fidler: Q. Do you find in the letter of December 19th, 1940, that you produced, any threat against Snap-On as a company, one of the parties to this suit?

The Witness: What do you mean by threat here? Will you give me what you are driving at here, by "threat"?

Mr. Fidler: Q. I want you to use the term "threat" in the same sense that is used in the pleading, which reads,

343 "the latter nevertheless continued its threats of prosecution against petitioner,"—Now, does that letter of December 19th, 1940 contain any threat against Snap-On?

(Witness Johnson examines said letter.)

A. I would say that by inference there is—You are questioning here, for example, the manner of the records in the case. You say we "employed the reporter. Part of the transcript is not reported correctly or fully. The reporter delayed in transcribing part of the record. You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth."

Q. Do you consider that a threat of prosecution?

A. Well, we are in the heart of prosecution and have been right along here. I don't know how else you could link it up.

Mr. Lindsey: You answer the question yes or no. What is the use of arguing?

Mr. Fidler: Q. Did you consider that, at the time that letter was written, a threat of prosecution?

A. I don't recall, but evidently our legal counsel has.

Q. Well, did you consider it a threat, at that time?

A. I did, yes.

Q. What other threats are there in that letter?

(The witness again examines the document.)

344 Mr. Freeman: Why don't you ask him what he considered threats in the letter?

A. Here is another statement by you: "and I assure you that there are further developments to still be revealed. You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman Patent without the slightest justification."

Mr. Fidler: Q. Did you consider that, at the time you received that letter, as a threat of prosecution?

A. I would consider it in the tone in which the letter is written, yes.

Q. Do you find any other threats in that letter of December 19th, 1940?

A. You might take the next paragraph here:

"You cannot shift your responsibility to Mr. Hobbs. We and Automotive do not propose to permit either you or your client Snap-On to divest yourselves of responsibility. We simply refuse to permit Automotive to be the goat."

Q. Did you consider that a threat of prosecution, at the time you received the letter of December 19th, 1940?

A. No doubt I did.

Q. Well, did you?

A. I did.

Q. Any other threats in that letter of December,
345 1940, December 19th, 1940?

A. I don't think so.

Q. Are those all the threats, threats of prosecution that were made against Petitioner at the time of the Interference?

A. I would say the letter speaks for itself here, for any others.

Q. Is that all the threats that were made against Snap-On Tools Corporation, at that time?

A. I believe so.

Q. Now, paragraph (30), of Snap-On's Third Amended Petition, further states: "that said threats were repeated to a point that petitioner", that is, Snap-On, "was coerced to cooperate with Larson and Precision Instrument Mfg. Co.". When were those threats repeated?

A. I do not know.

Q. Were they ever repeated to you?

A. Not to me, because I am not counsel in this case.

Q. Were they ever repeated to any other officer of Snap-On, that you know of?

A. Not that I know of.

Mr. Freeman: You use the word officer as distinguished from its counsel or lawyer?

Mr. Fidler: Yes. I use it in the ordinary sense in which you use it customarily.

346 Q. How was Snap-On coerced to cooperate with Larson and Precision?

The Witness: Is that a question for me to answer?

Mr. Fidler: That is right.

A. I do not know.

Q. How was Snap-On coerced to subscribe to Automotive's terms that were simultaneously tendered in the form of the agreements, Petitioner's Exhibits 4 and 6?

A. That would be for counsel to answer.

Q. You cannot answer that personally?

A. No, sir.

Q. You signed the contract, Petitioner's Exhibit 4, did you not?

A. Do you have the signed document here? If you have it in your files and it is signed, I signed it.

Mr. Fidler: I do not have the signed document, but I would like to ask counsel for Snap-On whether or not they do have it available?

Mr. Alberts: I think it is here. I saw it this morning.

Mr. Freeman: Are you talking about the agreement as between—

Mr. Fidler: —Automotive and Snap-On.

Mr. Freeman: You have an original copy. Why don't you produce yours?

347 Mr. Hibben: It is probably back at our office.

Mr. Lindsey: We will adjourn until tomorrow, if you want to do that.

Mr. Hibben: That is the one that is attached to the Petition as Exhibit 4

(Mr. Alberts hands document to the witness.)

Mr. Fidler: Q. Your counsel has just handed you the original of the agreement in question. Now I ask you, did you sign that agreement?

A. Yes, I did.

Q. Now, why did you sign it?

A. I signed it upon advice of counsel.

Q. For no other reason?

A. We generally look to our counsel in matters of that kind.

Q. But did you have any reason for signing it?

A. This is the— What do you mean by reasons there, Mr. Fidler?

Q. Did you have any reason for signing the agreement, Petitioner's Exhibit 4?

A. Other than it is a settlement in a controversy.

Q. Were you coerced into signing that agreement, Petitioner's Exhibit 4?

A. No, sir.

Q. Was Snap-On Tools Corporation, the company, a party to this suit, coerced into signing that agreement,
348 Petitioner's Exhibit 4?

A. Not directly, no.

Q. How were they coerced indirectly?

A. I did not say that we were coerced indirectly.

Q. Then, they were not coerced into signing that agreement, is that correct?

A. I have already answered that.

Q. You said not indirectly. I asked you whether or not they were directly or indirectly coerced into signing the agreement, Petitioner's Exhibit 4?

A. When I said directly, I meant directly either by AMMCO or the firm of Davis, Lindsey, Smith & Shonts.

Q. Was Snap-On coerced by anybody other than those persons into signing the agreement, Petitioner's Exhibit 4?

A. No.

Q. Paragraph (30), of Snap-On's Third Amended Petition, further alleges that "respondent did thereafter suppress the evidence of said perjury and withheld making its information and complaint to the proper officers". What is the basis of that allegation?

The Witness: Where do you read that, Mr. Fidler, on what page? Where do you start this?

(Mr. Fidler indicates on page 22 of the Third Amended Petition for Declaratory Decree.)

The Witness: Will you read that question?

349 (Pending question read by the Notary.)

The Witness: I can't answer that one.

Mr. Fidler: Q. Were you familiar with this letter, Automotive's Exhibit 4 for identification, at the time it was written? (Mr. Fidler hands document to the witness.)

A. I believe I was with him when he dictated this letter, yes.

Q. What was the purpose of writing that letter to Mr. Larson?

A. I do not know.

Mr. Freeman: Will you wait about three minutes?

Mr. Lindsey: Yes.

(Whereupon a short intermission followed.)

Mr. Fidler: Q. You are the officer of Snap-On Tools Corporation as distinguished from its Patent Attorney, who handles the patent matters for the Company, are you not?

A. No, I do not.

Q. Who handles that?

A. We have a young man by the name of Walter W. Daniel.

Q. Who, in 1938, handled the patent matters for Snap-On, aside from the patent attorney?

A. I may have handled them in part. At that time, he was an assistant to me, referring now to Mr. Daniel.

Q. And when did Mr. Daniel start handling the patent matters at Snap-On, now distinguishing as between him and the patent attorney that it retained otherwise?

350 A. In 1939. (Mr. Ooms now leaves the hearing room temporarily.)

Mr. Fidler: I would like to ask counsel for Snap-On to produce the original of the agreement of September 28th, 1938, which is attached to the Petition as Exhibit 5.

Mr. Alberts: Mr. Ooms must have that as an exhibit in the Interference. I produced them in the Interference.

Mr. Fidler: Here is a copy.

Mr. Freeman: Just tell me, is this a copy?

Mr. Fidler: Yes.

Mr. Freeman: That is O. K.

Mr. Fidler: Q. I hand you a copy of an agreement dated September 28, 1938, and which is Exhibit 5 attached to Snap-On's petition filed in this case, and ask you whether or not you, as vice president of Snap-On, executed or signed that agreement?

(Mr. Fidler hands document to the witness.)

A. Yes. It shows that I did.

Q. What was the purpose of entering into that agreement?

Mr. Freeman: I think the agreement is the best evidence as to its contents.

Mr. Fidler: I am asking the witness as to Snap-On's purpose of entering into the agreement.

Mr. Freeman: Well, whatever Snap-On's purpose was, it is all combined in the written document which is here being presented to you.

351 The Witness: Does that answer the question?

Mr. Freeman: I don't know. You can ask Mr. Fidler about it.

Mr. Fidler: I wish the witness to answer the question.

A. I would say that when we entered into this agreement, we entered into an agreement here with Kenneth R. Larson, who was formerly a mechanic, and who presented what looked like a pretty good development in a tension wrench, and that an agreement such as this would be customary practice with an individual who had not established himself.

(Witness Johnson hands copy of Petitioner's Exhibit 5 to Mr. Fidler.)

Mr. Fidler: Q. This agreement, which is Petitioner's Exhibit 5, provides:

"Larson agrees to permit Snap-On Tools Corporation to withhold one-fourth of the purchase price from each order as a defensive patent litigation fund to be used by Snap-On Tools Corporation in the event they are sued for patent infringement by virtue of their sale of torque wrenches they are supplied by Larson."

Why was that provision incorporated in that agreement?

Mr. Freeman: The agreement itself is self-explanatory and the reason for putting it in has been stated in
352 just what you read from the agreement. The agreement speaks for itself.

Mr. Fidler: I am asking the witness to state Snap-On's reason for including that provision in the agreement.

Mr. Freeman: That question is objected to, as asking for secondary evidence.

Mr. Fidler: I ask the witness to answer.

Mr. Freeman: Go ahead and answer.

The Witness: I have no objection to answering it here.

Mr. Freeman: Go ahead and answer it.

A. I don't know what the procedure is in a hearing of this kind. There is nothing at all in the question about it—because in dealing for any kind of an item, our purchase order form shows, where we are dealing with well established companies, that we are to be kept free and clear of all liability arising from patent infringement.

Now, in dealing with an individual, who is entering into a business here and who has no business standing, that

(Witness refers to Petitioner's Exhibit 5) is a customary practice on new developments.

Mr. Fidler: Q. Well, you don't do that with your regular customers, do you?

The Witness: Who do you refer to, by "regular customers"?

Mr. Fidler: Q. Your regular customers from whom you purchase equipment or to whom you sell equip-
353 ment?

A. There is a difference there, because if we buy from the Stanley Rule & Level company, we know the company is a long-standing, established company, a company with a sound financial position, and they have accepted orders on the basis that any infringement suits will be undertaken by them.

Q. At the time you entered into this agreement, Petitioner's Exhibit 5, you were receiving wrenches from Automotive Maintenance Machinery Company and selling them, were you not?

A. At that date, I don't know whether or not the arrangement had been terminated with Automotive.

Q. When you entered into that agreement with Mr. Larson, did you not expect some difficulties to arise with respect to Automotive?

A. No, sir.

Q. I now show you an original agreement, which is Automotive's Exhibit 3 for identification, and ask you whether or not you signed that agreement?

A. I did.

Q. Now, this agreement, Automotive Exhibit 3 for identification, was to take the place of the agreement of
354 September 28, 1938, Petitioner's Exhibit 5, was it not?

The Witness: Will you read that question?

(Pending question read by the Notary.)

A. I don't know what Exhibit 5 is. I would like to see the other document.

Mr. Fidler: This agreement about which I asked you a moment ago.

The Witness: He is asking whether this supersedes that (Witness indicates documents.)

(Colloquy off the record between Mr. Grover and the witness.)

A. I don't know that these two agreements are related here, Mr. Fidler, this agreement (Indicating document) and this one (Witness indicates another document.).

Mr. Fidler: Q. Well, you entered into this agreement, Automotive Exhibit 3 for identification, in order to enable Precision Instrument Manufacturing Company to enter into an agreement with Automotive, did you not, in settlement of the Interference?

A. I believe that is the intent of this document.

Mr. Freeman: Referring to Exhibit 3 for identification.

Mr. Fidler: Q. Now, this agreement, Automotive Exhibit 3 for identification, provides for the payment of $500.00, to Precision Instrument Manufacturing Company, as a part of the cost of the same, does it not?

355 Mr. Freeman: That is objected to, as asking for secondary evidence. The agreement speaks for itself, and it is the best evidence. You go ahead and answer.

Q. Well, if it is in the document, as this gentleman says, it does speak for itself.

Mr. Fidler: Q. Please read paragraph numbered 3 of the document, which is Automotive Exhibit 3 for identification, and state whether or not it is a fact that $500.00 was advanced to Precision Instrument Manufacturing Company in entering into that agreement?

Mr. Freeman: That is objected to, for the same reason: The agreement speaks for itself, and you are calling for secondary evidence.

Mr. Lindsey: Ask him if $500 was paid.

Mr. Fidler: Q. Isn't that correct?

Mr. Freeman: Are you following up with what Mr. Lindsey asked?

Mr. Fidler: No. I am asking my question.

Mr. Freeman: Will you please read the question.

(Pending question read by the Notary.)

A. I personally didn't make the transaction and I think you would have to refer to the records of the Corporation for the answer on that.

Mr. Fidler: Q. Don't you know it is a fact, personally?

356 A. No, I don't.

Q. Wasn't $500 paid to Precision Instrument Manufacturing Company, in connection with this agreement, Automotive Exhibit 3 for identification?

A. It probably was, although I didn't sign the check, or I don't recall seeing it.

Q. It also is a fact, is it not, that this agreement, Automotive Exhibit 3 for identification, was entered into in

order that Snap-On might enter into its agreement with Automotive, which agreement is Petitioner's Exhibit 4 in this case?

A. I would believe that it is an interlocking agreement, yes.

Q. And it was entered into, that is, the Automotive Exhibit 3 agreement, to enable Snap-On to enter into the agreement, Petitioner's Exhibit 4, isn't that correct?

The Witness: What is No. 4? I would like to see No. 4.

(Mr. Fidler hands document to the witness.)

A. I believe so, yes.

Mr. Fidler: Q. Who paid for the prosecution of the Larson Application involved in Interference No. 77,565?

A. Larson has been paying his own way on a patent basis.

Q. At the time that the Application was filed back 357 in 1938, who paid for the preparation and filing of the Larson Application?

A. I am quite sure that Larson did.

Q. And who paid for the prosecution of that Application, at the time it was filed?

A. I am quite sure that Larson did.

Q. And who paid for the prosecution of the Interference No. 77,565?

A. The same answer.

Q. Paragraph (4) of Snap-On's Third Amended Petition alleges "that respondent is representing to customers of petitioner and prospective purchasers of petitioner's wrenches which include the agencies of the United States Government making purchases for the armed forces of the United States, that petitioner's aforesaid wrenches infringe the claims of said respondents", that is, Automotive's, "letters patents." What customers of petitioner are alleged to have received such representations from Automotive?

A. I don't recall.

Q. Well, did you ever know?

A. No. I have heard some talk, but I don't know directly. That will probably come out in further testimony. Mr. Lindsey: Ask him who would know about it.

358 Mr. Fidler: Q. Well, who would know about that?

A. Our attorney probably would know about it.

Q. That is, Mr. Harry C. Alberts?

A. I refer to Mr. Alberts.

Q. Who of Snap-On would know about that?

A. I believe our sales manager would know about that.
Q. And what is his name?
A. Mr. Rogers Palmer.
Q. Who are the prospective purchasers of Snap-On's wrenches to whom such alleged representations were made.
A. Well, under our method of marketing, it could be the individual garage mechanic, it could be the service station owner, it could be industrial plants.
Q. But you don't know who the prospective purchasers were?
A. I do not. No.
Q. It is stated that the "prospective purchasers ... include the agencies of the United States Government making purchases for the armed forces of the United States". What agencies of the United States Government?
A. Well, that could be one of many agencies. It might be the Air Forces; it might be Lend Lease. It could be any number of other armed forces' agencies.
Q. Well, do you know?
A. I do not.
359 Q. It is further stated, in Snap-On's Third Amended Petition, in paragraph (5) thereof, "That no suit has been instituted by the respondent", that is, Automotive, "against petitioner," Snap-On, "charging infringement of the aforesaid letters patents, but upon information and belief respondent", that is, Automotive, "has made representations, wholly without foundation, to petit... 's customers and prospective customers, to the effect that a patent suit is pending between" Automotive and Snap-On, "and that a cease and desist order will soon be issued by the courts against" Snap-On "who no longer will be able to sell its aforesaid wrenches, which representations have interfered and are interfering with the lawful conduct of this petitioner", Snap-On, "and causing petitioner's," Snap-On's, "customers to delay, if not altogether stop, the purchase of the aforesaid wrenches". What customers of Snap-On are ferred to there?
A. I do not know.
Q. What representations, the text of the representations, were made?
A. I do not know.
Q. What prospective customers of Snap-On are referred to there?
360 A. They probably would be the same as those stated in the previous answer.

Q. Who would know about these customers?

A. Our sales manager, Mr. Rogers Palmer.

(Mr. Ooms returned to the hearing room at this point in the taking of the deposition.)

Mr. Fidler: Q. Mr. Alberts, in a letter addressed to my attention and dated December 3rd, 1940, stated in the second paragraph of such letter, that "The officials of Snap-On Tools Corporation who were given a complete report on the conflicting versions stated by Mr. Thomasma at your office, on the one hand, and the testimony presented by and in behalf of Larson, on the other hand, have authorized me to withdraw as counsel for Larson and the latter has been so advised as of November 28th, 1940." Will you please produce such report?

The Witness: Of that meeting that was held?

Mr. Fidler: No. The report, the complete report that Mr. Alberts gave you on the conflicting versions of the testimony, which is referred to in a letter by Mr. Alberts to me.

Mr. Freeman: Does that letter show whether the report was written or oral?

361 Mr. Fidler: It does not show.

Mr. Freeman: He has already testified as to an oral report. Why don't you just ask him whether there was any written report?

Mr. Fidler: Well, let the witness so state, if that is a fact?

The Witness: Well, I don't recall. I looked through the letters that I have here. I don't recall any written report referring to such.

Mr. Fidler: Q. Was there a report then made to you at a meeting, such a report?

A. I testified earlier this morning that Mr. Alberts met with us at the plant.

Mr. Fidler: I suggest that we take a fifteen-minute recess, and if you have produced any papers in response to the request of my letter—

Mr. Freeman: You say we haven't produced any?

Mr. Fidler: I say if there are any.

Mr. Freeman: We have barrels' full, brother, we have them all—

Mr. Fidler: May I take that time to look them over?

Mr. Freeman: You bet you can.

Mr. Fidler: And I may or may not have some additional questions.

(Whereupon a recess was taken.)

362 Mr. Lindsey: We will keep this file in the same order, and we would like to have one of the representatives for Precision or Snap-On present while we go over it.

Mr. Freeman: This happens to be Snap-On's party.

Mr. Lindsey: Snap-On, then.

Mr. Freeman: At the request of Automotive.

(Mr. Alberts remained in the hearing room while Mr. Fidler, Mr. Lindsey and Mr. Hibben examined files of papers produced by counsel for Snap-On Tools Corporation.)

Mr. Freeman: Are you through with these (Indicating file of papers)? You don't want any of these?

Mr. Hibben: No. They are all in order, by the way.

Mr. Freeman: All right.

Mr. Hibben: And none in this one (Mr. Hibben hands another file of papers to Mr. Freeman.)

Mr. Freeman: We brought them all down (Referring to files of papers.)

(Mr. Fidler, Mr. Lindsey and Mr. Hibben continue the examination of files of papers produced by counsel for Snap-On Tools Corporation.)

Mr. Fidler: Where are those other files that you
363 took back from me?

Mr. Grover: They are here. (Mr. Grover produces files of papers.)

Mr. Freeman: Don't give him any of those that you kept out.

Mr. Grover: No.

Mr. Fidler: Did we have that?

Mr. Grover: Yes. Here you are, and you saw this one.

Mr. Fidler: Yes.

On April 7, 1943, counsel for Automotive wrote to counsel for Snap-On, asking that certain correspondence and papers be produced at the time that Mr. Johnson was produced for the purpose of his testimony.

Counsel for Snap-On have produced several files, and I note that some of these files relate to correspondence passing between Automotive and Snap-On. We are not interested at this time in these files, and merely turned through them rapidly, to determine whether or not they were correspondence which we had sought. The correspondence in these Automotive-Snap-On files was not read.

364 Of the other files or papers in the other files produced, we wish to have the reporter mark, for iden-

tification, a yellow copy of letter dated November 11th, 1940, purporting to be from W. W. Daniel to Precision Instrument Manufacturing Company of Des Plaines, Illinois, this to be marked for purposes of identification as Automotive Exhibit No. 7.

Mr. Freeman: We can remove it.

Mr. Ooms: What year was that?

Mr. Hibben: 1940.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 7, for identification.)

Mr. Fidler: This letter marked as Automotive Exhibit No. 7 for identification has been taken from the file marked #11484 entitled Zimmerman vs Larson. Shall we put in photostatic copies?

Mr. Freeman: Yes. That will be all right. We will agree with you on that.

Mr. Fidler: I should also like the reporter to mark for purposes of identification, as Automotive Exhibit 8, the original of a letter dated October 18, 1938, from Mr. Harry C. Alberts to Snap-On Tools Corporation, Attention
365 of Mr. Joseph Johnson, which letter is being taken from a file marked number 11354, entitled Torque Wrench.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 8, for identification.)

Mr. Fidler: I also wish the reporter to mark, for purposes of identification, as Automotive Exhibit 8-A, a copy of an affidavit which accompanied the letter, Automotive Exhibit No. 8 for identification, which copy of affidavit is unsigned, but the affiant is indicated to be Kenneth R. Larson.

(Said document was thereupon marked by the Notary as Automotive Exhibit 8-A, for identification.)

Mr. Fidler: I also wish the reporter to mark, for purposes of identification, as Automotive Exhibit 9, a so-called invention record dated August 29th, 1939, in the name of George M. Walraven, which record is being taken from File number 11354 entitled Torque Wrench.

(Said document was thereupon marked by the Notary as Automotive Exhibit No. 9, for identification.)

366 Mr. Freeman: That was taken out of the same file, wasn't it?

Mr. Fidler: Yes.

Mr. Freeman: Is that all now?

Mr. Fidler: Yes.

I also wish the reporter to mark, for purposes of identification, as Automotive Exhibit No. 10, the original of a letter from Mr. Harry G. Alberts to Snap-On Tools Corporation, Attention Mr. Joseph Johnson and dated December 19th, 1940, which letter was not contained in any file handed to me, but accompanied some other loosely arranged letters or copies of letters.

(Said document was thereupon marked by the Notary, at the request of Mr. Fidler, as Automotive Exhibit No. 10, for identification.)

Mr. Fidler: I have no further questions of the witness.

367 STIPULATION.

Mr. Freeman: It is stipulated by and between counsel for the respective parties, that the exhibits identified by Automotive during the taking of the testimony of Walter Carlsen and Joseph Johnson shall be retained by coun-
368 sel for Snap-On and he shall make photostatic copies, and thereafter photostatic copies shall be offered in evidence in lieu of the originals.

Mr. Fidler: That is all right.

Mr. Freeman: (Continuing.) With the same force and effect as though the originals had been offered.

Mr. Lindsey: For identification.

Mr. Fidler: Instead of "offered in evidence", offered for identification.

These depositions will be signed.

Mr. Freeman: The witnesses may sign them without the presence of the Notary.

Joseph Johnson,
Signature of Witness to his foregoing deposition.

369 And afterwards, to wit, on the 9th day of August, 1943, there was filed in the Clerk's office of said Court a certain Report of Proceedings, portions of which are in words and figures following, to wit:

370 Report of Proceedings at Trial, in the above-entitled cause, before Honorable Michael L. Igoe, one of the Judges of said Court, commencing on Monday, May 10, A. D. 1943.

Present:

Messrs. Davis, Lindsey, Smith & Shonts, By: Harry W. Lindsey, Jr., Esq., Raymond E. Fidler, Esq. and George N. Hibben, Esq., and Messrs. Fyffe & Clarke, By: A. J. Smith, Esq., on behalf of Automotive Maintenance Machinery Co.;

Casper W. Ooms, Esq., on behalf of Precision Instrument Manufacturing Company and Kenneth R. Larson;

371 Messrs. Bair & Freeman, By: Will Freeman, Esq., on behalf of Snap-On Tools Corporation.

Also present:

Harry C. Alberts, Esq.

386 The two agreements which Mr. Lindsey has just referred to, I would like to put into evidence as Defendants' Exhibit 4, the agreement between Automotive and Precision and Larson; and, as Defendants' Exhibit 5, the agreement between Automotive and Snap-On Tools Corporation, both dated December 20, 1940.

The Court: I take it you have no objection to that?

Mr. Lindsey: No, no objection, may your Honor please. Copies are attached, of course, to the pleadings and are admitted to the pleadings. So I see no real necessity of offering them, though I have no objection.

The Court: All right, they may be received.

(Said agreements, so offered and received in evidence, were marked respectively DEFENDANTS' EXHIBITS 4 and 5.)

Mr. Ooms: For purposes of further identification: Defendants' Exhibit 4 is the Exhibit 1 attached to the Complaint in this case, and Defendants' Exhibit 5 is the Exhibit 4 attached to the Petition for Declaratory Judgment.

I would like at this time to offer into evidence, because

they will be repeatedly referred to by the witnesses, three wrenches, merely as typifying the general classes that are here involved: As Defendants' Exhibit 1, a wrench
387 made by Automotive Maintenance Machinery Company and sold by it to Snap-On and by Snap-On to the trade.

Mr. Lindsey: I suggest you just offer them and we can inspect them later, if there is any question about them, if your Honor please. I am not personally familiar with all of them.

The Court: They may be admitted subject to your later inspection of them.

Mr. Lindsey: That is right. We will save a little time.

(Said wrench, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 1.)

Mr. Ooms: As Defendants' Exhibit 2, the wrench made by Precision Instrument Manufacturing Company in 1939 and 1940, and constituting the subject matter of the Larson patent application which was in Interference.

The Court: It may be received.

(Said wrench, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 2.)

Mr. Ooms: As Defendants' Exhibit No. 3, the present wrench which is being made by Precision Instrument Manufacturing Company and sold to Snap-On Tools Corporation and which is the accused wrench in the infringement case.

Mr. Lindsey: I will object to the last one because it has nothing to do with the issues before your Honor. That
388 was placed on the market, of course, after all this alleged perjury and compounding perjury. It has nothing to do with the issues now before your Honor.

Mr. Ooms: I am not going to trouble about the structure or anything else. Your Honor raised a question this morning about how this entire issue arises, and to the extent it may be useful to refer to one of these, without going ahead and describing everything, I think it ought to be permitted to go in.

The Court: For that purpose, it may be.

(Said wrench, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 3.)

Mr. Ooms: As Defendants' Exhibit 6, I offer the certificate of Edward J. Hughes; that Esther Meltzer was commissioned a notary public on July 15, 1940 for a term

of four years. She is the stenographer before whom the Interference Depositions were taken.

The Court. Can't you folks agree upon that?

Mr. Lindsey: We are willing to concede that. If they will submit anything of that sort, we will agree to it. We are not questioning that fact at all, may your Honor please.

The Court: All right. It may be received.

(Said certificate, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 6.)

389 Mr. Ooms: As Defendants' Exhibit 7, I would like to offer into evidence a board containing five patterns which were in evidence in that form in the Interference.

Mr. Lindsey: No objection.

The Court: It may be received.

(Said board of five wood patterns, so offered and received in evidence, was marked as DEFENDANTS' EXHIBIT 7.)

Mr. Ooms: As Defendants' Exhibit 8, a board upon which are mounted a number of torque wrenches and parts which were in evidence in the Interference in that form.

Mr. Lindsey: No objection.

The Court: It may be received.

(Said board of wrenches and parts, so offered and received in evidence, was marked as Defendants' Exhibit 8.)

Mr. Ooms: As Defendants' Exhibit 9, the drawing which was in evidence in the Interference as Larson's Exhibit 27.

Mr. Lindsey: No objection.

The Court: It may be received in evidence.

(Said drawing, so offered and received in evidence, was marked as DEFENDANTS' EXHIBIT 9.)

Mr. Ooms: Kenneth R. Larson, will you take the stand?

KENNETH R. LARSON, one of the defendants herein, called as a witness on behalf of the Defendants, having
390 been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ooms.

Q. Please state your name.

A. Kenneth R. Larson.

Q. Where do you live?

A. 1206 Center Street in Des Plaines, Illinois.

Q. How old are you, Mr. Larson?
A. Thirty-seven.
Q. What is your occupation?
A. I work for the Precision Instrument Manufacturing Company and design tools for them.
Q. Do you hold an office with that company?
A. Yes, I am president of that company.
Q. That is the Precision Instrument Manufacturing Company which is defendant in this suit?
A. That is right.
Q. And you are the Kenneth R. Larson who is a defendant in this suit?
A. That is right.
Q. The Precision Instrument Manufacturing Company makes torque wrenches, is that correct?
A. Yes, sir.
Q. How long have you made those?
391 A. Since the fall of 1938.
Q. And you are making torque wrenches today?
A. That is right.
Q. And to whom do you sell these torque wrenches?
A. Snap-On Tools Company.
Q. That is the Snap-On Tools Corporation, Inc., which is a defendant here?
A. That is right.
Q. When did you first have to do with torque wrenches in any way at all, Mr. Larson?
A. In the year 1937. 1936 is when I had the first one I bought from a company, the Cedar Rapids Engineering Company.
Q. That was known as the Kwik-Way wrench?
A. That is right.
Q. And that is your earliest experience with them?
A. Yes, sir.
Q. When did you first have to do with the designing and manufacture of a torque wrench?
A. During 1937.
Q. Are you the Kenneth R. Larson who was a party to the Interference No. 77565 in the United States Patent Office?
A. That is right.
Q. You testified in that Interference in October and
392 November 1940?
A. I did.

Q. Before Esther Meltzer, a notary public?

A. Yes.

Mr. Ooms: I would like to have this volume of Interference testimony, which is labelled "Deposition of Kenneth R. Larson," marked as Defendants' Exhibit 10.

Mr. Lindsey: No objection, may your Honor please, if it is understood this does not include all the testimony Mr. Larson gave in the Interference. Is that correct?

Mr. Ooms: I was about to add that, but it consists of pages 1 to 203, inclusive, and is all, as I understand it, that has been transcribed by the Court Reporter, Thomas R. Raftery. This happens to be the original typewritten copy.

The Court: It may be received in evidence.

(Said transcript, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 10.)

Mr. Ooms: Q. I call your attention, Mr. Larson, to testimony appearing on page 119 of the transcript, Defendants' Exhibit 10, where you were asked:

"Q. 809. And that was the time that Exhibit 9"— referring to Exhibit 9 on this panel, Defendants' Exhibit 8— "—came into being in its infantile state?

"A. August of 1934 or September — August of 1934.".

393. Did you so testify in that Interference?

A. I did.

Q. Was that true or not?

A. No, that wasn't true.

Q. On page 125 of that transcript you were asked:

"Q. 848 (And following.) Now, when were those wrenches completed, with Exhibits 38, 39, 40, 41 and 42, which comprise these exhibits here on this board"—now marked Defendants' Exhibit 8, and you answered:

"A. In this eleven and twelve case?

"Q. 849. Yes.

"A. That was in 1934 and the early part of 1935."

Did you so testify?

A. Yes, I did.

Q. Was that true or not?

A. No, it wasn't.

Q. On that same page, 125, Defendants' Exhibit 10, you were asked:

"Q. 850. What is Exhibit 28 on that board?" You answered:

"A. That was the final design I decided upon after experimenting with the others.

394 "Q. 851. When did you complete that?

"A. During 1935.

"Q. 852. In which wrench did you place that?

"A. No. 13.

"Q. 853. And when was that completed?

"A. I believe during the summer of 1935."

Did you so testify in that Interference?

A. Yes, I did.

Q. Was that the truth or not?

A. No, sir.

Q. On page 129 of the same transcript, Defendants' Exhibit No. 10, appears this passage:

"Q. 885. Now, what else was done with Exhibit 15?"

That refers to Exhibit 15 which appears on the board Defendants' Exhibit 8.

"A. This particular tool was sold in the fall of 1936 to Mr. Barggren and then it had a paper dial on it, and when he returned it I drilled these holes in there. Outside of that; that is the only change that has been made in it."

Did you so testify?

A. Yes, I did.

Q. Was that the truth?

A. No, sir.

Q. On page 82 of that transcript you were asked,

395 with respect to the drawing which is here marked Defendants' Exhibit 9, the following:

"Q. 540. Now, did you at any time make a sketch or drawing of the wrench parts?

"A. Yes, I did.

"Q. 541. When did that take place?

"A. I didn't make the drawing myself. It was drawn for me.

"Q. 542. By whom?

"A. By a high-school student in Des Plaines.

"Q. 543. Do you know who he was?

"A. I don't recall his name exactly, no. I could produce him if I had to, I think.

"Q. 544. You don't remember his name at this time?

"A. No, I don't.

"Q. 545. When do you recall he made that sketch for you?

"A. It was during May, 1936.

"Q. 546. How do you fix that date?
"A. It was just before Decoration Day.
"Q. 547. How do you fix the year?
"A. Well, it was the same year that I had started the parts house of my own."

Did you so testify?

396 A. Yes, I did.

Q. Was that the truth?

A. No, sir.

Q. When were the wrenches which you referred to in those extracts from the testimony which I have just read actually made?

A. In the fall of 1937 and during 1938.

Q. And when was the drawing which is here in evidence as Defendants' Exhibit 9 actually made?

A. During 1938.

Q. And who made it?

A. George B. Thomasma.

Q. Who was George B. Thomasma?

A. A man whom I had gotten acquainted with through another party in Des Plaines there.

Q. What was his occupation?

A. He was working for the Automotive Maintenance Machinery Company in North Chicago, assembling crank pin tools at the time, he told me.

Q. And how did you first meet?

A. I believe the first time I met him was in 1932, when he delivered to a place I was working for some equipment.

Q. You weren't interested in torque wrenches at that time?

A. No, sir.

Q. When did you and he get an interest in torque wrenches?

A. During 1938.

397 Q. Did he have any connection with your enterprise that was later formed into Precision Instrument Manufacturing Company?

A. Yes, he did.

Q. Did he work with you on the development of the wrench you first made?

A. He did, yes.

Q. Did you know that he was working for Automotive Maintenance Machinery Company at that time?

A. Yes, I knew that.

Q. Was there any discussion with him about that?

A. Yes: He said that would have no bearing on the case at all, that he simply worked there, he didn't have any contract signed with them of any kind.

Q. Do you know what work he did there at Automotive?

A. No, I don't definitely.

Q. Did you ever discuss with anybody else as to his connection with your company and with Automotive?

A. No, I didn't.

Q. Did you make any effort to conceal his connection with your company?

A. After we had started doing business with the Snap-On Tools, yes.

Q. I would like to have you review for us briefly, Mr. Larson, how you happened to begin making wrenches
398 for Snap-On Tools Corporation. Will you tell us that briefly?

A. Well, after we had made the first tool and it worked fairly satisfactorily, we discussed whom we would get to sell it, and I had been in the automotive parts business and knew that it was very poor policy to try to sell it through any source of any kind, and that tool sales companies or tool manufacturers would be the best logical outlet.

Q. You said "we did this". Whom do you refer to?

A. Thomasma and I talked it over, but I did all the contact work and all the—nearly all the work all the way through, as far as that is concerned.

Q. How did you meet the Snap-On Tools Corporation?

A. I drove up one day and talked to one of their men in their organization.

Q. Did you know them?

A. No, not before that, no, sir.

Q. How did you know that they existed or might be a possible outlet for your company's product?

A. I had bought tools from them, from their salesman, in the past, and knew they had salesmen traveling around from garage to garage to sell their tools.

Q. And when you went up there the first time were you alone or did someone accompany you?

A. I was alone.

399 Q. Whom did you see at Snap-On Tools Corporation?

A. A man by the name of Allen G. Howes, I believe.
Q. Did you see anybody else since that trip?
A. Oh, yes, but I don't recall the names.
Q. Do you recall approximately when that was?
A. That was in May of 1938.
Q. And tell us briefly what happened from there on with respect to your business relationships with Snap-On?
A. Well, I was trying to interest them in selling my tool because I considered it was superior to any other made, and it wasn't until in the winter of 1938 that anything definite was done.
Q. And what was done at that time?
A. During the fall there was a patent application filled out for the tool, and in November or December I received an order for 500 tools to be delivered to them.
Q. From Snap-On Tools Corporation?
A. That is right.
Q. Who prepared the patent application?
A. Mr. Alberts.
Q. Was he your attorney?
A. No, he was Snap-On Tools' Patent Attorney.
Q. How did it happen he was preparing this Patent Application?
400 A. I didn't have any money to pay for the patent with, and they agreed to finance the patent for exclusive sales rights on the tool.
Q. Who was to finance your business of making these tools?
A. I had to do that myself.
Q. And you had some understanding with them in the fall of 1938 that you would make the tools and turn your patent over to them? I hand you a document dated September 28, 1938 and attached to the petition in this case as Exhibit 5, entitled "Preliminary Understanding, Kenneth R. Larson and Snap-On Tools Corporation." Will you tell us what that is?
A. That was the Preliminary Understanding or the beginning of the contract made out between myself and Snap-On Tools.
Q. And when was that made out or entered into?
A. September 28, 1938.
Q. Was it pursuant to that agreement that the Patent Application was prepared and filed?
A. Yes, it was.

Q. And as I understand it, as I understand this agreement, you gave them an exclusive license to sell the wrench which you were to make?

A. That is right.

Q. And there were certain provisions in here as to
401 what price would be charged, and if certain circumstances arose where you couldn't deliver, Snap-On Tools could make those over?

A. That is right.

Mr. Ooms: I will ask to have that Exhibit marked Defendants' Exhibit 61.

(Said document was thereupon marked as Defendants' Exhibit 61, for identification.)

Mr. Ooms: I might say, your Honor, that in the taking of the pre-trial depositions we referred to a large number of Exhibits, and if there is no objection I would like to retain that numbering, for convenience.

The Court: It is perfectly all right, so far as I am concerned.

Mr. Lindsey: No objection.

The Court: It may be received in evidence.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 61.)

Mr. Ooms: Q. And the Patent Application that you have referred to as having been made out in October, 1938 is the Patent Application that was subsequently in the Interference we have talked about?

A. That is right.

Q. When did you undertake to make torque
402 wrenches under your understanding with Snap-On Tools Corporation?

A. We formed a corporation, George B. Thomasma, Mr. Carlsen and myself, formed a corporation in December of 1938 to start manufacturing torque wrenches.

Q. And that is the Precision Instrument Manufacturing Company?

A. That is right.

Q. Now, sometime later, your Patent Application was thrown into Interference with one of Mr. Zimmerman, was it not?

A. That is right.

Q. And it was in that Interference that you gave the testimony to which we have just referred?

A. Yes, sir.

Q. Do you recall about when that was?
A. It was during the summer of 1940.
Q. When the testimony was taken?
A. No; that was during the fall. I thought you said when the Interference had been declared.
Q. And in the course of that Interference you were called upon to execute a Preliminary Statement—
A. Yes, sir.
Q. —setting forth certain dates in which you allege you had had the first conception and made the first drawing and had first disclosed your invention to others.
403 Do you recall that?
A. Yes, I remember.
Q. You made and executed such a statement?
A. Yes, I did.
Q. Where did you get the dates that you put into that instrument?
A. George B. Thomasma, most of them.
Q. At that time was he still connected with the Automotive Maintenance Machinery Company?
A. Yes, he was.
Q. That Preliminary Statement was executed under oath?
A. Yes, it was.
Q. Did you discuss with your attorney the dates that appear in that preliminary statement?
A. Yes; I told him that that is what the dates were.
Q. Did you have any proof of what the dates were at that time?
A. No, I didn't.
Q. And do you recall that when this testimony was taken you were called upon to testify about those dates?
A. Yes, I was.
Q. That testimony was taken before a reporter by the name of Thomas L. Raftery?
A. Yes, sir.
404 Q. And you were sworn by a notary public, Miss Esther Meltzer?
A. That is correct.
Q. Where was that testimony taken?
A. In Mr. Alberts' office.
Q. Do you recall anything that occurred shortly after that testimony was closed in November, 1940 with respect to that testimony?

I call your attention, Mr. Larson, to a letter on the letterhead of Harry C. Alberts, dated November 11, 1940, which I have had marked Defendants' Exhibit 62.

A. Yes, I remember this letter.

Q. Do you recall the circumstances of your receipt of that letter?

A. Yes.

Mr. Ooms: I would like to read that letter at this time, your Honor, and unless there is some objection here, wherever we read these documents, I think if the transcript merely shows that a certain exhibit was read, it will save encumbering the record with as many pages of typewriting as we can avoid.

Mr. Lindsey: No objection.

(Thereupon Mr. Ooms read Defendants' Exhibit 62, for identification.)

405 Mr. Ooms: Q. What did you do when you received that letter?

A. I called Mr. Alberts and told him I thought that was this man Krichiver trying to make trouble in our corporation rather than anything else. I told him nothing at all about Thomasma's connection with the company, fearing that he would terminate our contract with Snap-On Tools.

Q. Had you ever told Snap-On Tools anything about Thomasma?

A. No, I never had.

Q. Had they asked you anything about possible connections between people in your employ and Automotive's employ?

A. Yes, they had.

Q. What had you told them?

A. I told them there was no connection.

Q. You told them you were the independent Inventor of this wrench?

A. That is right.

Q. When you received this letter did you get into touch with Thomasma?

A. I don't recall whether it was this letter or another one, that we did get in touch with him, yes.

Q. And do you recall what was said or done on that occasion?

A. I asked him if his attorney had been in touch with

Automotive's attorneys and he said Krichiver wasn't
406 his attorney; that he didn't even know the man and he had no connection with him whatever.

Q. Had you ever met attorney Krichiver?

A. Yes, I had.

Q. In what connection?

A. He attempted to cause us considerable trouble in our corporation by insisting that we give Mr. Thomasma a job at a salary far beyond his earning capacity.

Q. When was that?

A. During the summer of 1939.

Q. He became a stockholder in your company sometime in that year, did he not?

A. Yes.

Q. And he held five shares of stock?

A. Yes, that is right.

Q. Now, at the time you talked to Thomasma about this letter, you say it may have been some other letter, was there any discussion as to any information having been conveyed to the other side?

A. We simply asked him about it, and he said there hadn't been, that he had nothing to do with them at all.

Q. Was he working for you at that time?

A. No, he wasn't.

Q. Did he ever work for Precision Instrument Company?

A. He was paid money, but he never worked for us.

407 Q. He was never in there from day to day as an employee?

A. No, sir.

Q. Was he ever on a salary?

A. No, sir.

Q. He held a large number of shares of stock?

A. Yes.

Q. How many?

A. 260.

Q. For what was he given that stock?

A. For some tools that he furnished, and the preliminary work that was done on the tool in developing it.

Q. What tools had he furnished?

A. Oh, he had paid one payment, I think, on a lathe that we bought, ten dollars, and he furnished some drills and the remainder in small tools that he had at his home, he said.

Q. And you gave him, or the company gave him 260 shares of stock, is that right?

A. That, and the work he put in. He put in considerable time. He put in a considerable number of hours on the tool while we were making it.

Q. In the commercial manufacture or in the development?

A. In developing of it.

Q. How many shares of stock in the company did you get?

408 A. The same amount.

Q. 260 shares?

A. Yes.

Q. What was that for?

A. For the same thing, also a great deal of money that I had spent on it.

Q. Spent on what?

A. On developing of the tool.

Q. After that letter of November 11th, Defendants' Exhibit No. 62, what was the next thing that occurred in connection with this Interference?

A. I believe shortly after that Mr. Alberts calls us down to his office and told us he had proof that we had testified falsely.

Q. Do you recall when that was?

A. I don't remember the exact date, no.

Q. Was it shortly after the testimony had been given?

A. A short time afterwards, yes.

Q. Tell us who was at his office at that time, what time of the day you got there, and just what occurred.

A. It was shortly after noon, and Mr. Carlsen and myself went to his office, and he was there with Mrs. Johnson, the president of Snap-On Tools, and he told us then what had been told to him at Mr. Fidler's office, and he said that Mr. Thomasma was in and had identified the 409 drawing and proven to them that he had made the drawing, that if there had been any false testimony he wanted to know it because if there was, why, he didn't want to represent us any longer.

Q. Did he tell you anything in detail as to what occurred at that meeting? Just tell us everything you can that you remember of that meeting.

A. Well, there might be other things I don't recall right now.

Q. How long a meeting did you have that afternoon with Mr. Alberts and Mr. Johnson and Mr. Carlsen?

A. About thirty minutes, I would say.

Q. And who did the talking?

A. Mr. Alberts did most of it.

Q. And what did you say when he reported what he had learned that morning at the office of Mr. Fidler?

A. I didn't know that Mr. Thomasma had done what he had until then, and I was still under the impression that he was to not say anything, which he had said he would right along, and then I had to admit that he had made the drawing.

Q. You did admit that to Mr. Alberts that afternoon?

A. I did, yes.

Q. What else occurred at that meeting?

A. He told me he would have to stop representing us as attorney, that we would have to get another attorney.

410 Q. And did you do anything about getting another attorney?

A. Yes, we did.

Q. What did you do?

A. We asked him if he had any suggestions as to whom we should get, and he said he would give us a list of attorneys and we could pick one out, and we did that.

Q. Was that meeting friendly or was it heated?

A. Well, it wasn't exactly friendly.

Q. Did Mr. Johnson say anything?

A. As I recall it, he had very little to say.

Q. And what did you do when you left that meeting at Mr. Alberts' office on that day?

A. Either the same afternoon or the next day we went to see another attorney.

Q. Whom did you see?

A. Mr. M. K. Hobbs.

Q. And what did you do with him? Tell us what happened when you got to his office, what was said and done.

A. Mr. Carlsen and I went to his office and we told him the predicament we were in, and Mr. Alberts had said—he told us the various types of attorneys we could get. We could get one to try to scare the other attorneys, or get one that would probably be more friendly with them, and suggested Mr. Hobbs might be more friendly than

411 some of the others, and it was kind of a delicate matter and it should be handled as gently as possible, and

not—we were really in a spot that we couldn't back out of, and we talked it over and decided Mr. Hobbs would be the man for the job.

Q. You say "we talked it over." Who talked it over?

A. Mr. Carlsen and I.

Q. And what did you tell Mr. Hobbs when you got to his office?

A. We told him exactly what had happened.

Q. Happened where?

A. In this testimony. We didn't relate the entire testimony, but we told him that there had been some false testimony given, that we wanted an attorney that would try to settle it and as peacefully as possible. We didn't want to be turned over to the District Attorney for it. And he said he thought surely something could be done, and we told him if he needed any of the facts of the case he could call Mr. Alberts and he could tell him, and while we were in his office he called him.

Q. And there was a discussion of some kind between Mr. Hobbs and Alberts?

A. That is right.

Q. Did anything else occur at that meeting with Mr. Hobbs?

A. Only that he said that he would send us a bill 412 or we would have to give him a retainer's fee, if he decided to take the case after talking to Mr. Alberts.

Q. Did you subsequently get a bill from him?

A. Yes, we did.

Q. When did you next meet him?

A. I don't recall exactly.

Q. You had some correspondence with Mr. Hobbs after that, did you not?

A. From him, yes.

Q. You didn't write any letters to him?

A. I doubt that we did. We might have one or two, but I doubt that we wrote any.

Q. Do you have a stenographer in your office?

A. No, we do not.

Q. Have you ever had one?

A. No, sir.

Q. How do you transact your business?

A. By longhand letter, up until just in the last few days.

Mr. Ooms: I would like to have the stenographer mark

as Defendants' Exhibit 63 a letter of December 4, 1940 from Mr. Hobbs to Precision Instrument Manufacturing Company; as Defendants' Exhibit 64, an accompanying draft of a letter proposed to be sent to Mr. Fidler, dated December 4, 1940; as Defendants' Exhibit 65, a statement of the firm of Haight, Goldstein & Hobbs, "To Re-
413 tainer for Professional Services Re Settlement of Larsen-Zimmerman Interference, Charges to be credited against the retainer, $250.00."

(Said letter of December 4, 1940, proposed letter of December 8, 1940 and statement of Haight, Goldstein and Hobbs, were thereupon respectively marked as Defendants' Exhibits Nos. 63, 64 and 65, for identification.)

Mr. Ooms: Q. I show you, Mr. Larson, Defendants' Exhibits 63, 64 and 65, and ask you what those are?

A. 63 reviews a conference we had had that morning of—no, a conference they had had with Mr. Fidler.

Q. That is a letter from Mr. Hobbs to you, is it?

A. That is right.

Q. And Defendants' Exhibit No. 64 is what?

A. Well, it is a proposition made to Mr. Fidler on a settlement.

Q. Where did you get that copy?

A. It was sent to me by Mr. Hobbs.

Q. And Defendants' Exhibit No. 65 is Mr. Hobbs' bill?

A. That is right, yes.

Q. And that bill was paid on December 6, 1940?

A. That is right.

Mr. Ooms: I would like to read into the record at this time, without receiving them, Defendants' Exhibits 63 and 64.

414 I am assuming that this won't be too tedious to your Honor, reading these documents, but I think it is the quickest way of getting a picture of the case.

The Court: Go ahead.

(Thereupon, Mr. Ooms read Defendants' 63 and 64, for identification.)

Mr. Ooms: Defendants' Exhibit 64 is unsigned and apparently was not sent.

Q. The letter, Defendants' Exhibit No. 63, Mr. Larson, refers to a conference had with Mr. Hobbs that morning, December 4, 1940. Do you recall that conference?

A. Yes, I believe that was the second time we were in his office.

Q. And who was there?

A. Mr. Carlsen and myself, and possibly one other man who I believe was Mr. Haight.

Q. You don't know who it was?

A. I am quite sure that was who I was introduced to.

Q. A young man?

A. Yes, a young man.

Q. In his thirties?

A. I would say twenties or thirties, yes.

Q. What was said or done at that conference?

A. Then we talked over just about what should be
415 put into this agreement or settlement, to offer some settlement or try to get a settlement.

Q. Did you know at that time that Mr. Hobbs had talked to Mr. Fidler?

A. Yes, I believe he said he did.

Q. Did he report at all on what was said in his conference with Mr. Fidler?

A. At that first conference I don't recall just exactly what was said.

Q. When did you next meet Mr. Hobbs after this meeting of December 4th?

A. Well, it was—we had several meetings. I don't recall every one of them, and I don't remember just exactly when the next one was.

Q. Do you recall about how much later than the meeting of December 4th?

A. A few days.

Q. The entire negotiations apparently, from what is in the record here, ran over the month of December. Do you recall how frequently you saw Mr. Hobbs in that period?

A. I would say every day or two.

Q. And where did you see him, at your office or at his?

A. At his office.

Q. And were you usually alone or was somebody with you?

416 A. Sometimes I was alone and sometimes Mr. Carlsen was with me.

Q. I show you a letter on tissue and consisting of two pages, dated December 6th, 1940, and purporting to be a copy of a letter sent by Mr. Hobbs to Mr. Fidler, marked Defendants' Exhibit 66. Did you receive that letter from Mr. Hobbs?

A. Yes, I did.

Q. Did you ever discuss it with him?
A. Yes, I did.
Q. When?
A. Shortly after—this is what was made up of this other letter, that other proposal there.
Q. When you refer to the other proposal you are referring to the draft in evidence here as Defendants' Exhibit 64?
A. That is right.
Q. And did you talk to Mr. Hobbs between the time he submitted Defendants' Exhibit No. 64 to you and the time that he sent this letter, Defendants' Exhibit No. 66, to Mr. Fidler?
A. Yes, after he had sent this letter we made some changes in it.
Q. After he had sent the one to you?
A. The first one there, yes.
417 Q. Defendants' Exhibit No. 64?
A. Yes.
Q. And those changes are incorporated in Defendants' Exhibit No. 66?
A. That is right.
Mr. Ooms: I would like to read this into the record.
(Thereupon, Mr. Ooms read Defendants' Exhibit 66.)
Mr. Ooms: Q. What occurred after you received that letter, Mr. Larson?
A. The proposition that was put forth in that letter was turned down by the attorneys for AMMCO. They said they wouldn't agree to that, that they wanted more, something more than that.
Q. Where did you learn of that?
A. From Mr. Hobbs.
Q. Where?
A. In his office.
Q. And what did he tell you?
A. He said that they would have to have another conference and talk it over again.
Q. Did he tell you what they were asking for?
A. He said that they had—no, I don't recall exactly what he did say at that time.
Q. Did he ever submit any written agreements to you which purported to be the proposals made by Automotive?
418 A. There was quite a bit of conversation, that was oral conversation, that is, back and forth, between the

various attorneys, and they didn't seem to be able to reach any agreement at all one way or the other. There was quite a bit of talk which, of course, isn't written down. We can't have it as a matter of record.

Q. Did he ever tell you anything about the kind of proposal they would be willing to accept?

A. Well, they wanted a settlement whereby we would have to pay the difference between the selling price of the tool that we had been selling Snap-On Tools and the one they had been selling to them, which was about $3.00 per tool for about 15,000 tools.

Q. Where did you get that information?

A. That was told to me by Mr. Hobbs.

Q. Do you recall seeing a letter that Mr. Fidler had sent to Mr. Hobbs about the same time that Defendants' Exhibit No. 66 went to Mr. Fidler, that is, about December 6th, 1940?

A. Well, I might have, but I don't recall exactly now.

Q. And what did you do with respect to the proposals that they were submitting to Mr. Hobbs?

A. We were trying to get as reasonable a settlement as possible. We realized we were on the wrong side, as far as demanding anything, but we were still trying to
419 make it as reasonable as possible. We didn't want to lose our entire belongings and possessions and everything we had.

420 Q. Had you ever discussed with Mr. Hobbs this testimony of yours in the interference?

A. Yes, I had. We discussed that in the first conference we had with him.

Q. Had you ever discussed the significance of that testimony in the case?

A. Yes.

Q. What, if anything, do you remember he said or you said about it?

A. Well, when we told him it was false testimony, he said that was a serious offense and we should settle it as peaceably as possible and we tried our best to not cause too much trouble.

Q. When, if any time you recall, did you discuss that with him?

A. In the first meeting and also the second one.

Q. Did you have any discussions with him about the time these letters were exchanged between Mr. Hobbs and Mr. Fidler?

A. Oh yes, there were various discussions.

Q. Did Mr. Hobbs continue to be your attorney throughout these negotiations?

421 A. Up to the time when we wouldn't—we told him we wouldn't sign one agreement he had there because Snap-On Tools still held the assignment of the patent and they wouldn't release it to us under the terms of those contracts they had submitted or talked about, anyway, and then he withdrew or sent us a letter saying he was going to withdraw as our attorney.

Mr. Ooms: Please mark this Defendants' Exhibit 67.

(Said document was thereupon marked as Defendants' Exhibit No. 67, for identification.)

Mr. Ooms: Q. I show you a letter on the letterhead of Haight, Goldstein & Hobbs, bearing date of December 18, 1940, and ask you if that is the document you are referring to?

(Handing document to witness.)

A. Yes, this is the one.

Mr. Ooms: I would like to read into the record, without having it repeated there, Defendants' Exhibit 67.

(Thereupon Mr. Ooms read Defendants' Exhibit 67, for identification.)

Mr. Ooms: Q. Well, after Mr. Hobbs withdrew, according to that letter, Defendants' Exhibit 67, what occurred?

A. Mr. Carlsen and I went to Mr. Alberts and asked him what should be done.

422 Q. Do you know when that was?

A. Probably it was on the 18th or 19th of December.

Q. What was your conversation at that time?

A. I don't recall the exact words but he said that there should be some reasonable settlement made, we shouldn't have to sign the contract as it was submitted to us.

Q. Did you have a draft of the contract at that time submitted to you?

A. I believe we did. I couldn't say for sure.

Q. In this letter of December 18th that I read to you from Mr. Hobbs, he referred to the clutch and indicating mechanism which is the subject of Larson's application in our Interference. Did you have another patent application pending at that time?

A. Yes, I believe I did.

Q. Who owned that?

A. I owned it or I applied for it through the Precision

Instrument Manufacturing Company. It was assigned to Snap-On Tools.

Q. What did you assign it to Snap-On Tools for?

A. For the—the same as the other patents had been assigned to them, just as collateral.

423 Q. When Mr. Hobbs refers to getting the right to make the clutch and indicating mechanism under that patent application, do you know what he refers to?

A. That was just oral conversation, as I recall, there was no contract signed for that.

Q. Was anybody asking for that?

A. Oh yes, Automotive Maintenance Machinery Co. wanted both of our patents and, in fact, they wanted to put us out of business, frankly, that is what they wanted to do.

Q. You said they asked for both of those patents and you said before they asked for the difference between the price at which Snap-On sold wrenches and they were selling. Did they ask for anything else?

Mr. Lindsey: May I get that clear, Mr. Ooms? When you speak of patents, those were applications?

Mr. Ooms: That is right, applications.

The Witness: Patent applications.

Mr. Ooms: Q. Do you recall anything else they were asking for?

A. Not at present; no.

Q. Do you recall anything about the so-called defense fund?

A. Yes, that is true.

424 Q. What was the defense fund?

A. It was a matter of $4,000 we had built up at Snap-On Tools against possible litigation of any kind for patents and they wanted that entire fund.

Q. Do you recall where the so-called $4,000 defense fund came from? Whose money was it?

A. That was our money, Precision Instrument Manufacturing Company money.

Q. Who was holding it?

A. Snap-On Tools.

Q. Why?

A. As a trust fund against any possible litigation on this patent application.

Q. Was that under any agreement?

A. That is under our preliminary agreement or under the contract that was signed with them, yes.

Q. Did you turn over that fund to them?

A. To—
Q. To Automotive?
A. No, sir.
Q. Now, you said you went to see Mr. Alberts after Mr. Hobbs sent you that letter of December 18th,
425 Defendants' Exhibit 67. Just tell us everything you can about what occurred at that time.
A. Well, he said it wasn't reasonable, the settlement they wanted, and he felt we should go back and see Mr. Hobbs and see if some other agreement couldn't be reached and, so, we did go back to see Mr. Hobbs.
Q. When?
A. It might have been the same day or the next day, around about the 18th or 19th of December.
Q. Do you recall what happened at that time?
A. Yes, I remember what happened.
Q. What did happen?
A. I told him under the circumstances I thought he hadn't given us any ways near what we were entitled to as attorney for us. I told him that I knew that there had been an investigator investigating in the town out there for some time and that Mr. George B. Thomasma was under duress from the Automotive Maintenance Machinery Co. and if they had confronted their attorneys with that, that is Automotive, there would be a settlement made next day.
Q. You said he was under duress. What do you mean by that?
A. Because he had stolen several pieces of machin-
426 ery from them and sold them.
Q. Where did you learn that?
A. After I got associated with him.
Q. Who told it to you?
A. He did.
Q. Do you know where any of that machinery went?
A. Yes, sir.
Q. Where?
A. There was a parts house in Woodstock, Illinois that bought quite considerable of it from him. There was another in the city of Chicago that bought quite a bit from him.
Q. On December 18th or 19th, you say you told that to Mr. Hobbs?
A. That is right.
Q. Did he continue to represent you then?
A. Yes, sir.

Q. Did you have any further conservation with him about the case other than just what you have told us here this moment?

A. Only at various times he continued to tell us what a serious position we were in. The attorneys for AMMCO were always saying they were going to the District Attorney and other patent officials and they were going to
427 turn loose the dogs on us unless we signed the contract as they saw it or wanted it.

Q. Who told you that?

A. Mr. Hobbs.

Q. When?

A. I would say during the last week or so before the final contract was signed.

Q. Was it told to you more than once or just once?

A. Several times, yes.

Q. When he said they were going to the District Attorney and when he mentioned turning the dogs loose, what did that mean to you?

Mr. Lindsey: I object, your Honor. It doesn't matter what it means to him.

The Court: Sustained.

Mr. Ooms: Q. Was there any discussion with Mr. Hobbs about the testimony taken in the Interference and which he mentioned in his letter he never read?

A. Yes, Mr. Carlsen and I told him the facts.

Q. Did you know that testimony had been transcribed into books at that time?

A. I didn't, no.

428 Q. You knew about this drawing which is in evidence here as Defendants' Exhibit 9? You knew that was in existence?

A. Yes.

Q. Was there ever any discussion about the evidence that had accumulated in the Interference?

A. Well, except that it was still there, we knew it hadn't been destroyed.

Q. Was there any discussion about destroying it?

A. We were told that if we would settle and when a settlement was made, there would be a big bonfire, by Mr. Hobbs, that there would be a big bonfire that would burn up all evidence.

Q. Who told you that?

A. Mr. Hobbs.

Q. When?

A. At his office.

Q. Who brought up that subject as to what would take place with respect to the evidence?

A. Well, if we would sign the contract, if there was a settlement made at all, all evidence would be destroyed, there wouldn't be any of it left, there wouldn't be any against us thereafter, it would be settled once and for all.

429 Q. Who raised the question about the existence of evidence?

A. Mr. Carlsen and I with Mr. Hobbs. We asked him what would happen in the future. He said there wouldn't be any evidence, that evidence would all be destroyed as soon as a settlement was made.

Q. Do you recall about when that was said to you?

A. I believe at the last meeting we had with him when we had finally signed the contract.

The Court: We will take a recess of about ten minutes.

(A short recess was taken, after which the following occurred:)

Mr. Ooms: Q. Mr. Larson, some subpoenaes were sent out in the week of December 18, 1940 for witnesses in this Interference and your wife was among them, was she not?

A. That is right.

Q. Did your wife know anything about the work of Zimmerman?

A. No.

Q. Do you know why she was called in the Interference?

A. No, I do not.

Q. What motivated you in signing the agreement, Exhibit 4 before the court?

Mr. Lindsey: I object, if your Honor please. The 430 instrument speaks for itself.

The Court: I believe he can answer that question.

The Witness: May I see that one, please?

Mr. Ooms: Q. That is your agreement with Automotive.

(Handing paper to witness:)

A. Oh, the fact they gave up somewhere near a reasonable settlement.

Q. Have you finished your answer?

A. I think so, yes.

The Court: That is the agreement between Automotive and the Precision Instrument plus Larson?

Mr. Ooms: That is correct.

The Witness: Yes.

Mr. Ooms: Q. Do you recall when you signed that agreement?

A. It was December 20th, wasn't it?

Q. Where did you sign it?

A. In Mr. Hobbs' office.

Q. Who was there at that meeting of December 20, 1940?

A. Mr. Carlsen and Mr. Hobbs and myself, as near as I recall.

Q. There was nobody there representing the other side?

A. No.

Q. What was said when you signed that?

431 A. Well, that that settled all differences, troubles, and that was the end of all negotiations with them.

Q. Anything else you can remember?

A. Well, at the same time they said all this testimony and all evidence that had been accumulated would be burned.

Q. Who said that?

A. Mr. Hobbs.

Q. Was Mr. Alberts at that meeting that day?

A. No, he wasn't.

Mr. Ooms: That is all from Mr. Larson.

Cross-Examination by Mr. Fidler.

Q. Mr. Larson, did you ever talk to Mr. Wacker in connection with negotiations leading up to the settlement of the Interference?

A. No, sir.

Q. Did you ever talk to Mr. Lindsey?

A. No, sir.

Q. Did you ever talk to me in connection with those negotiations?

A. No, sir.

432 Q. Mr. Ooms read here a letter dated November 11, 1940, which is in evidence as Defendants' Exhibit No. 62. I ask you whether or not this letter was shown to Mr. Thomasma. I hand you the letter.

(Handing letter to witness.)

A. Yes, it was.

Q. And when was that letter shown to Mr. Thomasma?

A. The same day we received it or the day thereafter, at noontime.

Q. Under what circumstances was it shown to Mr. Thomasma?

A. We asked him what he knew about it.

Q. Who was present at the time that that letter was shown to Mr. Thomasma?

A. Mr. Carlsen, Mr. Thomasma and myself.

Q. Was that in an automobile in front of the Hack Machinery Company in Des Plaines?

A. Alongside the building, yes.

Q. Now, Mr. Carlsen in testifying in the pretrial depositions testified that there was no such automobile conference with Mr. Thomasma with respect to this letter, Defendants' Exhibit 62. Was that testimony true?

A. I would not know; I did not give it.

433 Q. I asked if he gave such testimony, was it true?

A. It couldn't have been if he gave it?

Q. There was such a conference?

A. There was such a conference, yes.

Mr. Lindsey: I suggest you read that testimony in the record, Mr. Fidler.

Mr. Fidler: Q. Now, did Mr. Alberts ever tell you of a conference that he had with me in my office on November 20, 1940?

A. I don't know exactly. I couldn't recall the exact day of any conference had.

Q. Now, he did tell you about a conference that took place in my office on November 28, 1940 at which time Mr. Thomasma, Mr. Johnson, Mr. Alberts and Mr. Wacker were present, is that correct?

A. On November 28th?

Q. Yes.

A. Yes, he did.

Q. Did he tell you about any other conference he had with me in my office?

A. Mr. Hobbs and, I believe, Mr. Alberts, too, both told me of various conferences they had at your office.

434 Each time it ended up by not any settlement or —

Q. Did he tell you about any conference where the testimony taken in the Interference was discussed in my office where Mr. Alberts and I were alone?

A. I don't recall that he did, no.

Q. In other words, you were told only of the conference he had with Mr. Thomasma in my office so far as discussion of the testimony was concerned, if that correct?

A. That is right.

Q. I understand that you were represented solely by Mr. Hobbs in the settlement negotiations?

A. That is right.

Q. Mr. Alberts didn't have anything to do with that on your behalf?

A. Not on my behalf, no.

Q. And all contacts made with Automotive Maintenance Machinery Co. in connection with the settlement matter was with Mr. Hobbs, is that correct?

A. On my behalf? Yes.

Q. And you also mean in behalf of Precision, too, is that correct?

A. Oh yes.

435 Q. Now, I understand from testimony previously given by you that Mr. Hobbs advised you that the contract you entered into on December 20, 1940 in settlement of the Interference was a fair contract. Is that testimony still true?

A. That is right.

Q. Now, at the time that you contacted Snap-On in connection with the sale of your wrench, you knew that Automotive was selling that wrench to Snap-On, did you not?

A. I did.

Q. And you knew at that time the construction of the wrench that Automotive was selling to Snap-On?

A. Yes, I did.

Q. Did Mr. Alberts ever ask you as to the identity of the incorporators of Precision Instrument Manufacturing Company?

A. No, he never did.

Q. Did he ever ask you anything about the corporate setup of that company?

A. No, sir.

Q. You also knew, did you not, that Mr. Thomasma had at sometime gone to Snap-On in connection with wrenches that were being manufactured by Automotive for Snap-On?

A. Yes, I knew that.

Q. Now, when you filed your application that was 436 involved in that interference, which is the application terminating in the Larson patent involved in this suit, you knew, did you not, that you were going to supply your wrenches to Snap-On?

A. Yes, I knew that.

Q. And you knew at that time that Snap-On was going to take your entire output of wrenches?

A. That is right.

Q. And you knew at that time that you were to be the sole supplier of those wrenches for Snap-On, did you not?

A. I hoped to be; yes; I didn't know for sure, no.

Q. Well, the wrench was one covered by your patent application?

A. That is right.

Q. And was it your understanding then in view of that that they were going to get the entire supply of those wrenches from your company?

A. That is right.

Q. Did you see a copy of Zimmerman's preliminary statement in the Interference 77565 at any time?

A. Not that I recall, no.

Q. You didn't see a copy of that preliminary statement setting forth the dates of invention of the party Zimmerman before you took or gave testimony in the Interference?

437 A. Not that I recall, no.

Q. You know what a preliminary statement is, don't you?

A. Yes, I do.

Q. How did you know the dates you had to beat in the Interference?

A. Because Mr. Thomasma had recommended to put them back far enough to be sure they would be prior dates and he said he thought that would be back far enough.

Q. And that information was sufficient for you to prepare a preliminary statement to beat Zimmerman in the Interference?

A. That is right.

Q. Who told you what you needed in the way of information for a preliminary statement?

A. What do you mean?

Q. Well, you know what the preliminary statement included?

A. Yes.

Q. Dates of invention, conception, disclosure reduction to practice?

A. Yes.

Q. Where did you get the information as to what was required for the preliminary statement?

A. From Mr. Alberts.

438 Q. When did you get that information?

A. In the fall—let's see—in the fall of 1938.

Q. Now, Mr. Larson, were you ever involved in an Interference prior to that one, No. 77565?

A. No, sir.

Q. Were you ever involved in any kind of a lawsuit where it was necessary for you to procure evidence?

A. No, sir.

Q. Well, now, who told you what you needed in the way of witnesses in order to prepare your testimony in the Interference?

A. I was told I should have witnesses to back up any statement that I made.

Q. Who told you that?

A. Why, Mr. Alberts.

Q. Did you at that time tell Mr. Alberts what the story was going to be?

A. Not right at that time, no; later, I believe.

Q. Well, how much later?

A. Oh, several months later, I believe, at the same time the Interference was declared and then he had to produce witnesses and proof.

439 Q. You told him the story that—about the development of your wrench?

A. Oh yes.

Q. That was the story you told during the taking of your testimony?

A. That is right.

Q. Did he explain to you then the witnesses you would require in order to corroborate that story?

A. As I recall, he did, yes.

Q. That is, a witness with respect to the making of castings originally?

A. That is right.

Q. With the making of a drawing?

A. That is right.

Q. And so forth?

A. Yes.

Q. And after that information was given to you by Mr. Alberts, what did you do?

A. I supplied the necessary evidence.

Q. Now, there was a Mr. Schultz that testified in the Interference?

A. That is right.

440 Q. And he produced various records?

A. That is right.

Q. Was the testimony he gave in the Interference true or false?

A. It was false.

441 Q. And where did the testimony come from that he gave falsely?

A. I told him what to say.

Q. And he knew at the time he gave it that it was false?

A. He possibly did.

Q. Do you know whether he did?

A. Yes, for castings that I had received from him, not on that particular job.

Q. Now, Mr. Schultz is the casting supplier for Precision Instrument?

A. That is right.

Q. What is the name?

A. Ravenswood Brass & Aluminum Foundry.

Q. He has supplied all the castings for your company, is that correct?

A. Quite a number of them; not all of them.

Q. Who besides Mr. Schultz is a supplier?

A. We bought from other suppliers—

Q. Who were they?

A. I do not recollect exactly right now; but we have other suppliers.

Q. How about Mr. Ford, the fireman in Evanston; so the testimony that he gave in Interference here was false?

442 A. It was false.

Q. Where did he get the information in order to give that false testimony?

A. I told it to him.

Q. Did he know that the testimony was false at the time he gave it?

A. He probably did.

Q. Do you know whether he did?

A. I knew it was.

Q. Did he know it was false at the time you put it in his mouth?

A. I imagine he did; yes, sir.

Q. Did Mr. Alberts ever check with you the testimony that you were to give in Interference either before or after you gave it, excepting what checking he did in connection with the letter of November 11, 1940, Defendants' Exhibit 62, and the conference that he had with you on November 28th after he had heard Mr. Thomasma's story.

A. As near as I know, no.

Q. Did he ever check with any of your witnesses the testimony that they were to give in the Interference?

A. To my knowledge, he didn't, no.

Q. Now, do you know why the Snap-On was inquiring of you, or Precision, as to why there was any one of
443 AMMCO, or associated with AMMCO that was connected with your company?

A. No, I don't.

Q. Who on behalf of Snap-On ever made such an inquiry?

A. What inquiry?

Q. As to whether or not there was any one associated or connected with AMMCO who was working with or associated with Precision?

A. Mr. Alberts, when the preliminary understanding was signed, yes.

Q. Who asked you then—he asked you then if AMMCO was associated?

A. Yes.

Q. Why did he ask you that question?

A. Because they wanted to have nothing to do with the company.

Q. With what company?

A. Automotive Maintenance Machinery Co., or any of its employees.

Q. Do you know why they did not want to have anything to do with Automotive or any of its employees?

A. I didn't know at the time, no.

Q. Notwithstanding the fact that you knew of Thomasma's connection with Automotive Maintenance Machinery Co.?

A. That is right.

444 Q. And his association with you while he was still working for that company, and notwithstanding the

fact that you knew that he helped frame Precision, you still don't know why any such precaution was taken?

A. I don't, no.

Q. Now, isn't it true that Mr. Thomasma did do some work for Precision?—I am talking about George B. Thomasma.

A. No, he never did any work for Precision.

Q. Didn't he help set up machines and benches, and so forth, in getting Precision ready for manufacturing?

A. He did in that way, yes; I would say about a week or ten days' work, he put in for Precision Instrument.

Q. Didn't he work at night, after having worked at the Automotive?

A. With the exception of a week or ten days, he didn't, no.

Q. But he did do some work for Precision?

A. About a week or ten days, yes.

Q. Now, will you please tell us why you gave false or perjured testimony in Interference No. 77565?

A. Yes.

Q. Please state that fully.

A. Because Mr. Thomasma said that to get the patent we would have to get our dates early enough to be able to be ahead of Zimmerman's patent; and he told us approximately what time he thought that patent would have to be set back to, or the dates would have to be set back to get ahead of that patent.

I realize now that I made a serious mistake when I did it. It has been done, and there is nothing that I could do now to stop what I did then.

Q. Is that the best answer that you can give as to the reason why you gave false testimony in that Interference?

A. I had several years' work that I had put in on this tool and never realized any profit off of it; they had been all hard hours of work. I saw the possibility of losing everything if I had no patent. To this day I believe that the wrenches are not similar, but the patent wording says they are.

Q. I will now read you the testimony given by Mr. Carlsen in his pre-trial deposition:

"Q. Do you recollect whether or not the original of this letter of November 11th 1940 was discussed with any one but you and Mr. Larson?

"A. No.

"Q. Do you have any recollection of having gotten in touch with Mr. Thomasma after receiving this letter?

446 "A. No.

"Q. Have you any recollection of having shown this letter to Mr. Thomasma?

"A. No.

"Q. Do you know whether or not Mr. Thomasma, about the time that this letter was received, had knowledge of its receipt?

"A. No, he didn't have.

"Q. Didn't you and Mr. Larson get in touch with Mr. Thomasma and show him this letter, at which time he was working for the Hack Machine Company?

"A. No.

"Q. At Des Plaines?

"A. We did not.

"Q. Didn't you and Mr. Larson ride in an automobile with Mr. Thomasma at about the time of the receipt of this letter of November 11th, 1940 and show to him such letter?

"The Witness: How long after the beginning of the testimony did this thing occur, did this letter occur?"

And it was answered:

"This letter was dated November 11, 1940; and if
447 I recall correctly, the testimony ended about November 4, 1940, this letter having been written about a week after the conclusion of the testimony."

The witness then answered:

"No, neither one of us talked to Thomasma from the beginning of the testimony to the end of it, or even after the end of it. I do not believe either one of us as much as said hello to him since the beginning of this testimony.

"Q. Didn't you or Mr. Larson talk to Mr. Thomasma at some time about this letter of November 11th, 1940?

"A. No."

Was that testimony true, as given by Mr. Carlsen?

A. I am afraid it was not, because I remember after having read the letter that we did talk to him about it. Because he had hired Mr. Krichiver as his attorney, and caused us considerable trouble in our incorporation. We asked him at the same time if he knew all about Krichiver; he had never heard of him, never hired him as his attorney, and had nothing to do with it.

Q. Now, as I understand your testimony, you decided
448 to perjure yourself after the Interference was declared; is that correct?

A. No, that was before that.

Q. Well, was there any necessity for committing perjury before the Interference was declared?

A. The preliminary statement had to show the dates far enough back to get the patent, didn't it?

Q. Let me explain this to you, Mr. Larson—

A. Yes.

Q. There is no necessity for filing a preliminary statement until the United States Patent Office declares an Interference.

A. I understand.

Q. And after the declaration of an Interference, one of the first things that is done is the filing of a preliminary statement?

A. Yes.

Q. Now, was there any occasion for you to decide to commit perjury before the declaration of that Interference?

A. No.

Q. Did you ever prior to that time make a false oath with respect to the subject matter of that Interference?

Mr. Lindsey: You are speaking of the last half of 1940, are you not, Mr. Fidler?

449 Mr. Fidler: Yes.

Mr. Freeman: Is that cross-examination?

Mr. Ooms: I think the witness is entitled to have that stated clearly.

The Court: Start all over again. There are five lawyers here trying to suggest something about the answer. Now let us put the question so the witness will understand.

Mr. Fidler: Q. Did you ever, prior to the filing of your preliminary statement in the Interference, have occasion to make false oath with respect to the wrench which you were making at Precision?

The Witness: A. Not that I know of, no.

Q. Well, now, Mr. Larson, I show you a copy of an affidavit which was marked during the pre-trial depositions as Automotive Exhibit No. 8; this is a copy of an affidavit which is unsigned, and I understand that the original of this affidavit is in the possession of Mr. Alberts—if Mr.

Alberts has that original, I would appreciate if he would produce it.

Mr. Alberts: Yes, sir.

(Producing document.)

Mr. Fidler: Q. I now hand you the original of the affidavit to which I referred, and ask you to state whether
450 or not that is your signature at the end of that affidavit?

The Witness: A. Yes, this is.

Mr. Fidler: Q. And that affidavit is entitled In an Application for Patent, which is the application which was involved in the Interference; is that correct?

A. That is right; except this is dated October, 1938, not 1940. As I understood the question before, you said during 1940.

Mr. Fidler: I would like to read this affidavit, your Honor, the same way that Mr. Ooms read the letters; and I will offer the affidavit.

The Court: Go ahead.

(Whereupon Mr. Fidler read said affidavit to the Court.)

Mr. Fidler: Q. Mr. Larson, how many witnesses testified in Interference No. 77,565?

A. I don't know exactly.

Q. Well, eight besides yourself; does that refresh your recollection?

A. Possibly, yes.

Q. Who asked you to testify in this case and admit your perjury in the Interference?

A. In this case?

Q. Yes.

A. The one we are in now; you mean?

451 Q. Yes.

A. My attorneys.

Q. Who is that?

A. Mr. Ooms.

Q. What was the stated purpose of your so testifying?

A. To settle the discussions or disagreements for once and all; that, as I said before, we should have had a bonfire at the end of the other one, which was never held; and this has been held as a club over our heads all this time. The first it came along where there was any reason at all that AMMCO wanted it, they sued us for an infringement, where there is no infringement, for taking a couple of our

patent claims and putting it in their patent that was issued to me, where I never knew anything about that first patent.

Q. That was not stated to you by Mr. Ooms?

A. That was told me by Mr. Alberts; definitely, there were points in there that were never in the first patent.

Q. Then, Mr. Alberts asked you to testify that you committed perjury in this case?

A. No, Mr. Ooms.

Q. What did Mr. Ooms state to you, as the purpose in you appearing here and admitting your perjury in the Interference?

452 A. Ask Mr. Ooms the proper answer there; I am sure I couldn't give it.

Q. Is that the best answer you can give?

A. I am afraid it is, yes.

Mr. Ooms: I think he has answered that question, your Honor. I do not like to interrupt, or I do not like to have it appear I am trying to suggest anything to the witness; but he did answer the first time, and did answer the second time.

Mr. Fidler: No implications; I am trying to get the answer as to the fact.

Q. What, if anything, were you given or promised in return for so testifying?

Mr. Ooms: Object to that question. That assumes something was promised. I do not do business that way.

Mr. Fidler: I beg your pardon; I will restate the question—

Q. Has anything been given to you or promised you, in return for so testifying?

The Witness: A. No, sir.

Mr. Fidler: I wish to offer as Automotive's Exhibit 8-A, the affidavit identified by the witness and read to your Honor during the cross-examination.

The Court: There being no objection, it may be admitted.

453 Mr. Ooms: May we have the understanding that wherever we do not object, it may be admitted?

The Court: Yes, sir.

(Said affidavit so offered and received in evidence, was marked AUTOMOTIVE'S EXHIBIT 8-A.)

Mr. Fidler: Q. When did Mr. Ooms ask you to testify in this case?

The Witness: A. I do not recall exactly.

Q. Well, what is your best recollection?

A. I have no recollection on it at all; I do not remember.

Mr. Fidler: That is all the cross-examination.

The Court: What is the date of the testimony given before the Patent Office of the Interference?

Mr. Fidler: That testimony, your Honor, started, the taking of it started on October 24, 1940, and consumed about five days' time. There were some interruptions; the testimony was completed on November 4th, 1940, but the consumed time was about five days.

The Court: How long will you take now, Mr. Ooms?

Mr. Ooms: Just a few minutes.

454 *Redirect Examination by Mr. Ooms.*

Q. Do you recall having any conversation with me about this perjury, at all?

A. Yes, I remember a conversation.

Q. Do you recall when we first talked about it?

A. No, I don't, exactly.

Q. What do you recall of the conversation?

A. Oh, I don't recall a great deal of it, except that it would be the best thing to get it over with, so that it would not keep coming up again.

Q. Did I discuss with you your testimony in the Interference case?

A. Yes, I believe you did.

Q. Did you know that I had read that testimony?

A. I didn't know for sure, no.

Q. Did I ever ask you whether that was true or not?

A. Yes, you asked me.

Q. Do you know what else I read in the [illegible]?

A. No, I don't.

Q. Did I get your approval of the statements that I made in the answer, before I filed that?

A. Yes, you did.

Q. Did I tell you what it might mean to you personally?

455 A. Yes, you did.

Q. What did I tell you?

A. You said I might have to go to jail; I would have to stand the consequences, regardless.

Q. What did you say?

A. I said I was willing to do what was necessary to get it straightened out.

Q. Did you tell me why you were willing to go to jail?

A. Because I felt that I did not want it hanging over my head the rest of my life.

Q. Somewhere in there, in the testimony on cross-examination, you said that this preliminary statement had been prepared in the fall of 1938; that was just a misstatement, you meant the fall of the following year, did you not?

A. As far as the preliminary statement of the Interference, yes.

Mr. Ooms: That is all with this witness. I would like to offer, your Honor, the exhibits, Defendants' Exhibits 62 to 67, inclusive, which were referred to and identified by this witness.

The Court: There is no objection; they may be admitted.

(Said documents so offered and received in evidence, 456 were marked DEFENDANTS' EXHIBITS 62 to 67, inclusive.)

The Court: Any further questions?

Recross Examination by Mr. Fidler.

Q. I have a question or two: Mr. Larson, you approved of the filing of the pleading in which your perjury was pleaded in this case, did you not?

A. Yes, I did.

Q. And how long before you gave your approval of that was it that you discussed that matter with Mr. Ooms?

A. I imagine that would be a matter of record; only a few days, as I recall.

Mr. Fidler: That is all, your Honor.

(Witness excused.)

457 Mr. Freeman: Is Mr. Baumann in the Court Room? If he is, will he please take the stand?

Mr. Lindsey: May I place on the record, may your Honor please, the fact that Mr. Freeman requested me, very properly, to have Mr. Wise present? I had him present in my office, and Mr. Freeman came over. He handed Mr. Wise a subpoena which happened to be directed to Mr. Baumann. Mr. Wise asked me what to do about it. I told him that I wished that he would hand it to Mr. Baumann, if he could get in touch with him.

I understand Mr. Baumann is working on some Government matters and is out of town a great deal, and Mr. Wise did so. There was nothing improper about serving the

subpoena. I just wanted the record to show that we have cooperated in every way with defendants to have any witness which they desire present in the Court.

Isn't that a correct statement?

Mr. Freeman: That is a correct statement.

HOWARD H. BAUMANN, called as a witness herein on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

458 *Direct Examination by Mr. Freeman.*

Q. Mr. Baumann, will you give us your full name?
A. Howard R. Baumann.
Q. And your present address?
A. 4900 Blackstone Avenue.
Q. Chicago?
A. Chicago, Illinois.
Q. And by whom are you employed at present?
A. William J. Burns, International Detective Agency.
Q. And are you working out of Chicago?
A. I am working in Chicago principally, in and out of the city occasionally.
Q. Have you ever talked to me prior to a moment ago when I asked whether or not you were in the Court Room?
A. No, sir.
Q. Have you ever talk to Mr. Ooms, the first gentleman standing up now?
A. No, sir.
Q. Have you ever talked to Mr. Alberts?
A. No, sir.
Q. Have you ever talked to Mr. Grover?
A. No, sir.
Q. Have you ever talked to Mr. Johnson?
A. No, sir.
459 Q. Have you ever talked to Mr. Daniel?
A. No, sir.
Q. You do know Kenneth R. Larson, do you not?
A. I have met Kenneth Larson, yes, sir.
Q. And, likewise, you have met Mr. Carlsen?
A. Yes, sir.
Q. And, of course, you know George B. Thomasma?
A. Yes, sir.

Q. Now, in the summer of 1940 by whom were you employed?

A. By John A. Wise.

Q. Investigators?

A. That is right.

Q. And how long had you been with Mr. Wise?

A. I just went to work for him on August 1. I had worked for him before, but I hadn't worked for him during that entire year prior to that.

Q. You have had off and on business relationships with John A. Wise & Son?

A. That is right.

Q. They have an office at 20 E. Jackson, is that correct?

A. We had an office at 20 E. Jackson at one time.

Q. And that was in Room 800 of that building?

A. An office in 1202, also in the building.

Q. Of that same building?

460 A. That is right.

Q. Do you recall an investigation that you made in and around Des Plaines, Illinois, starting about August of 1940 and continuing until January of 1941?

A. Yes, sir.

Q. And under whose direction was that investigation made?

A. John A. Wise.

Q. Now, tell us what instructions you were given by John A. Wise when you started to make the investigation in August of 1940?

A. When I went out to—when John A. Wise gave me instructions he told me that there was a matter of a patent infringement involved, whereby there was a question involving this patent on a wrench. He told me that there was a concern in Des Plaines that were making a wrench, they called it the Precision Instrument Company, Precision Tool, I believe it is, and that also in some way there was a concern in Kenosha, I believe, by the name of the—no, in North Chicago, Maintenance—AMMCO is the best I can tell you. It is American Maintenance, I believe, and that they had made application for a patent and that the Kenneth R. Larson and this George Thomasma were members of this firm in Des Plaines, and that some time prior to this George Thomasma had worked for the American Maintenance Company.

461 Q. That is Automotive, so that the record—

A. I am sorry. Automotive Maintenance, is that it?

Q. Yes.

A. And he asked me to go out and check and find what I could about this particular—pick up all the information that I could, and I did, or attempted to.

Q. Were you given any memoranda or did you make any notes as a result of this?

A. I made some notes at the time which I stuck in my pocket.

Q. Were you given any memoranda prepared by Mr. Wise?

A. I don't believe so.

Q. Or by the people he was representing?

A. No, sir, I don't believe so.

Q. Did you know who Mr. Wise was representing?

A. He told me it had to do with the American—Automotive Maintenance Company, that it all.

Q. And when did you first meet Mr. Fidler, the gentleman sitting directly in front of you?

A. I don't remember, sir.

Q. You were in the offices of Davis, Lindsey, Smith and Shonts, were you not?

A. I had been there, yes, sir.

Q. Several times?

462 A. Prior to this, if that is what you mean.

Q. That is, during the period of the investigation?

A. I don't think I was in their office until, oh, way in the latter part of the investigation, if I remember.

Q. And have you been in their office recently?

A. Yes, sir.

Q. When?

A. About a week ago, I believe.

Q. In connection with this case?

A. Yes, sir.

Q. They talked to you?

A. Yes.

Q. And with whom did you talk at that time?

A. Mr. Fidler, Mr. Wise—

Q. And who else?

A. Mr. Lindsey and Mr. Hibben.

Q. Did they tell you that there was a suit pending, that you might be called as a witness?

A. They told me I might be called as a witness, yes, sir.

Q. And was Mr. Smith present at that time?

A. No, sir.

Q. Do you know Mr. Smith?
A. Do you mean of that firm?
Q. No, Mr. Smith who is sitting here at my right.
A. No, sir, I don't.
463 Q. Did you talk to Mr. Hibben?
A. I did that day, yes, sir.
Q. Who arranged for you to go to the offices of Davis, Lindsey, Smith and Shonts?
A. Mr. Wise.
Q. You say that about a week ago?
A. Yes, sir.
Q. Have you recently been working in and around Cleveland, Ohio?
A. No, sir.
Q. Were you shown any paper, exhibits or any documents when in the offices of Davis, Lindsey, Smith and Shonts a week ago?
A. No, sir, I don't believe so.
Q. What was said to you then in connection with this case?
A. Just merely asked me what I remember about the case.
Mr. Lindsey: May your Honor please, I think this is entirely immaterial. We haven't any objection to bringing out what we said, but it has nothing to do with this matter of perjury and compounding perjury.
The Court: Do you object to this?
Mr. Lindsey: I object.
The Court: Objection is sustained.
464 Mr. Freeman: Q. Going back to the investigation you made, tell me what you did in order to set up the instrumentalities that you used in making the investigation?
Mr. Lindsey: Same objection, if your Honor please. I don't see that this has anything to do with either the question of perjury or compounding of perjury.
Mr. Freeman: If your Honor please, I think it is material and it is imporatnt, because the defense here is that they had merely a suspicion, and we will show that when you spend $5,000 to make investigations, when you hire two detectives, when you have handwriting experts, when you go out and interview a lot of people, you must have a little bit more than mere suspicion, and we will connect it up. I endeavored to find out from the invoices

that were given to me by Mr. Fidler and Mr. Lindsey, and they have cooperated in that respect, as to what was meant by a "pretext" which appears upon the invoices, and Mr. Fidler says he doesn't know, so I will ask the man who set up the pretext, to tell this Court what he knows about it, and I think it is important.

Mr. Lindsey: May the Court please, I have no objection to questions directed to this witness as to what he found out and what he told us, or Mr. Fidler. That is the only question. How this information was obtained is en-
465 tirely immaterial. What pretext was established—

Mr. Freeman: I think it is important, because I think this Court should have all the background and not just a part of it.

The Court: The objection is overruled.

Mr. Freeman: Q. Would you like to have the question read to you again?

A. Yes, please.

(The last question was read by the Reporter.)

The Witness: If you are referring to the pretext, I don't know anything about that. That was set up by Mr. Wise.

The Court: What is the pretext?

Mr. Freeman: That is what I am trying to find out, your Honor. There was an invoice for some $557.85, an expense item of August 17, 1940, and I asked that question of Mr. Fidler, and I haven't had an answer yet. I am asking—

The Court: He says he doesn't know the answer.

Mr. Freeman: We will have Mr. Wise, and we may get the answer.

The Court: Then wait for him.

Mr. Freeman: Q. Can you tell us what you did when you started the investigation?

A. I went out and contacted or attempted to find out all
466 I could about the plant and who the members of the firm were, such as Thomasma and Kenneth Larson.

Q. And did you work continuously, starting early in August, 1940 up to the early part of 1941?

A. I believe the latter part of 1940.

Q. And you worked continuously?

A. Yes.

Q. And you operated out of Des Plaines?

A. Yes, sir. I lived in a hotel in Des Plaines.

Q. At the Elmwood Hotel there?
A. I have forgotten the name of it, frankly.
Q. By the way, do you recall the owner of that hotel?
A. No, I don't, sir. I don't recall his name.
Q. Did you by any chance tell him you were a F. B. I. man?
A. I did not.
Q. Do you know Walter Dutton?
A. I don't recall, sir. I believe I have heard the name.
Q. Did you ever make any trips up to Woodstock, Illinois?
A. Yes, I believe I did. I don't remember now whether I did or not.
Q. And that was part of this same investigation?
A. I think so.
Q. You went up to Woodstock while you were working out of Des Plaines in connection with this Automotive investigation, did you not?
467 A. I know I thought of it. I don't remember whether I went up there or not, to be perfectly frank. I don't remember whether I did or not.
Q. Let us take it easy and see if you can reflect as to the number of times that you went to Woodstock to—
A. If I went up at all, I didn't go over once, sir.
Q. Do you recall the name Walter Dutton?
A. I remember the name now that you have mentioned it.
Q. And he is in the automotive parts business?
A. Yes.
Q. Perhaps I might endeavor to refresh your memory. Was there any question as to certain property belonging to Automotive finding themselves in the Dutton place of business at Woodstock?
A. I don't believe so, sir. If I remember correctly, my reason for thinking about contacting Dutton at all was in connection with Carlsen, Mr. Carlsen.
Q. That is one of the men of the Precision Instrument Company?
A. That is right.
Q. Were you given any information as to the disappearance or the unauthorized removal of property belonging to Automotive?
A. I don't believe so. I don't remember it, sir.

Q. The name George B. Thomasma is familiar to you?

468 A. Oh, yes.

Q. You met Mr. Thomasma?

A. Yes.

Q. And you met Mrs. Thomasma?

A. That is right.

Q. And you had lunches with them? And dinners with them, did you not?

A. Yes.

Q. And did you ever go into any of the taverns in and around Des Plaines?

A. Yes.

Q. Many times?

A. Yes, sir.

Q. Many evenings?

A. Yes, sir.

Q. Over the period starting when?

A. When the case started, when I went out to Des Plaines.

Q. Did you meet Mr. Thomasma shortly after you got into the job in August of 1940?

A. I don't remember exactly what time. I met him sometime after I started, of course.

Q. You started early in August of 1940, that is correct, is it not?

A. That is correct.

Q. And, of course, you had certain expenses?

469 A. That is right.

Q. And who paid those expenses, who paid that expense?

A. Mr. Wise.

Q. Did you give him any itemized statement of your expenses, do you recall?

A. I just made a note on a piece of paper as to what my expenses were.

Q. Without any itemization whatever?

A. I believe I itemized it as to hotel and food. I am not positive of that, but I am reasonably sure I did.

Q. And you are telling us now that the item of expense and pretext, up to and including August 17th, 1940, in an amount of $557.85, you know nothing about?

A. That is right.

Q. Did you have any rather unusual expense during the week ending August 17th, 1940?

A. I didn't, sir.
Q. What was that?
A. I didn't, no, sir.
470 Q. What would your expense run usually?
A. I don't remember, sir. I presume it ran—my expense probably ran around seven, six or seven dollars per day.
Q. Did you ever give any money to George B. Thomasma?
A. I believe later in the case I gave him a matter of four dollars at one time to—I believe it was four dollars, I am not sure of the amount, it was in that vicinity—to compensate him for his time when he came downtown.
Q. That was for half a day?
A. I believe so, yes.
Q. Do you recall what you paid him for a day's time?
A. I don't remember paying him anything except that one time.
Q. Has your memory been refreshed recently?
A. I only remember questions similar to what you ask me and I recalled them as I could.
Q. You were examined unofficially?
A. That is right.
Q. There wasn't anybody present from the defendants, either Snap-On or Precision, when you were questioned?
A. No, it was more of a general conversation as to asking me to recall what I remember.
471 Q. Did you have an automobile at your disposal at Des Plaines?
A. No, sir.
Q. Did you ever make any payments on Mr. Thomasma's car?
A. No, sir.
Q. Did you ever pay for any automobile storage?
A. I don't believe so, no. I don't know any reason why I should.
Q. Now, in addition to yourself, who else assisted you in making the investigation in and around Des Plaines?
A. Nobody else assisted me, sir.
Q. Wasn't there two men on the job for awhile?
A. Not to my knowledge. There may have been but I didn't know of it.
Q. Did you use any woman to help in the investigation?
A. No, sir.

Q. How much would you say you spent in lunches and dinners for Mr. and Mrs. Thomasma?

A. I wouldn't know, sir.

Q. Now, you are telling us that there were no payments made in connection with a car?

A. I didn't make any, sir.

472 Q. Now, you made this investigation at Des Plaines and you rendered your reports how often?

A. Why, I would come into the office, oh, once or twice a week, possibly.

Q. And would you render a report in writing?

A. No, sir.

Q. Did you have any notes?

A. Well, I usually made notes, yes, sir.

Q. Do you have any of those notes available now?

A. No, I don't.

Q. Did you give any of those notes to Mr. Wise?

A. I don't believe I did, sir. I think I gave him the information verbally and he made notes himself at that time.

Q. Is it customary as an investigator to rely entirely on memory as to transactions?

Mr. Lindsey: I object, your Honor, not a proper question. The witness can answer as to what his custom is.

The Court: There has to be a limitation as to how far you go.

Mr. Freeman: This is one case we want the court to have all the facts in.

The Court: That is usually the case where a patent 473 lawyer comes in. I think there ought to be some limitation as to how far you go.

Mr. Freeman: I am going to stick pretty much to the text here.

The Court: Suppose you do.

Mr. Freeman: Q. Then you are telling us you made no notes and you rendered no written reports to Mr. Wise?

A. No, I made notes which I carried with me at the time I came to the office, I had notes, notations. Naturally, I did not always remember people's names or various little items I wanted to remember and I would jot them down on the back of an envelope or a piece of paper which I had in my pocket.

Q. Naturally, you did that with addresses and telephone numbers and things like that, is that correct?

A. Yes, sir.
Q. Did you give those notes to Mr. Wise?
A. No, sir, I don't believe I did.
Q. You are not sure?
A. If I did, it would be an exceptional case where I did.
Q. Did Mr. Wise make any notes when you talked to him?
A. Sometimes he would have a pencil in his hand and jot down information the same as I did.
474 Q. Did you ever dictate any memorandums into a dictaphone?
A. Not to my knowledge.
Q. You merely told Mr. Wise what the expenses you had incurred during the week amounted to?
A. Yes.
Q. How were you paid, by check or cash?
Mr. Lindsey: I object. This hasn't anything to do with it.
Mr. Freeman: I would like to find out.
The Court: What difference does that make, whether he was paid by check or cash?
Mr. Lindsey: It doesn't make any difference, your Honor, whether—
The Court: Objection sustained. Let's have another question.
Mr. Freeman: Q. Did you take any receipt from Mr. Thomasma for the moneys you paid him?
Mr. Lindsey: I object.
The Court: He may answer that question.
The Witness: I don't believe so, sir.
Mr. Freeman: Q. Was Mr. Wise ever with you at Des Plaines in connection with this investigation?
A. I don't think he ever was.
475 Q. And did you have anyone other than yourself at Des Plaines?
A. Not to my knowledge, sir.
Q. You worked entirely alone?
A. So far as I know. I mean—what I mean by that is, if Mr. Wise had other people working, I didn't know of it.
Q. Were you ever in the plant of the Precision Instrument Company, one of the defendants in this case?
A. Yes, sir.
Q. Who did you talk to there?

A. I think I met Larson in there, sir, and also I believe I met Carlsen in there.

Q. Did you introduce yourself?

A. I don't remember the circumstances now.

Q. Did you use your own name?

A. Yes, sir.

Q. Did you tell him you were an investigator?

A. No, sir.

Q. What did you tell him?

A. I don't remember, sir.

Q. You have no memory at all with respect to what you told Mr. Larson or Carlsen?

476 A. I don't remember exactly what I told them, no; after all, it has been three years ago.

Q. Did you tell him you were connected with or representing some chain store interested in the sale of torque wrenches or automotive supplies?

A. I might have, I don't remember, sir.

Q. Your memory doesn't serve you in that direction?

A. It is very possible I might have done that.

Q. But you do remember the payment of four dollars to Thomasma?

A. I remember that, yes, sir. Now, again, I am not sure of the exact amount. I think it was four dollars. I know I gave him some money.

Q. Do you recall about how many times you were in Mr. Fidler or Mr. Lindsey's office and made reports directly to Mr. Fidler?

A. I don't believe I ever did, sir.

Q. Never made a report at all?

A. I don't think so.

Q. All of your reports were made to Mr. Wise?

A. That is right.

Q. Do you recall taking Mr. Thomasma to Mr.
477 Fidler's office at one time?

A. Yes, sir.

Q. And do you recall the connection, why you were asked to bring Mr. Thomasma from Des Plaines into Mr. Fidler's office?

A. I don't offhand, no, sir.

Q. Do you recall the subject matter of an anonymous telephone call to Mr. Alberts and a letter which you received information about from Mr. Thomasma? Do you recall that?

A. I believe I remember Mr. Thomasma mentioning a letter he had received or mentioning something; whether it was a letter or what it was, I don't remember.

Q. Something about an anonymous telephone call?

A. Something.

Q. Did you report that to Mr. Wise or Mr. Fuller?

A. If I reported it to anybody, it would have been Mr. Wise.

Q. Do you recall making a report in that connection?

A. No, I don't.

Q. Do you recall some eighty-page affidavit that was executed by Mr. Thomasma?

A. I don't believe I ever saw one, sir.

Q. And your memory is quite fixed as to the letter with respect to this anonymous telephone call? You don't recall telling anybody about it?

A. I don't offhand.

Q. Did you meet Mr. Carlsen?

A. Yes.

Q. Where?

A. I met him on various occasions, at a tavern on one or two occasions, a bowling alley, and I am reasonably sure I saw him out at the plant; as a matter of fact, I know I did.

Q. How soon after you started your investigation in 1940, when did you meet Mr. Carlsen?

A. I don't know exactly.

Q. A week, two weeks or three weeks?

A. It might have been.

Q. I think we can save a lot of time if you will just tell us what you did when you started making this investigation? What were you looking for?

A. I was looking to find what information I could about Carlsen and Larson. As the story was given to me by Mr. Wise, as I remember, he said that there was a matter of some claims of a—the patent or the conception of the idea of this wrench that had been made by the people in Des Plaines, Carlsen, Larson, and I believe Thomasma was mentioned at that time. They wanted me—they asked me to go out and find out all I could about it and that is what I proceeded to try to do.

Q. What did you find out?

A. Well, frankly, I didn't find a great deal. I tried first by checking places where Larson worked. I tried to

find out from those people if they had ever seen or heard of the wrench prior to—I don't remember the date now—prior to certain dates before this investigation and I checked the various people that he worked with, people that he worked around and for. I talked to Carlsen. I can't remember all the details of the investigation at this time.

Q. Well, where did you get the names of the individuals for whom Larson had worked in the past?

A. I don't remember, sir. I probably got them by asking questions out at Des Plaines.

Q. You were quite friendly with Mr. Thomasma, were you not?

A. I was toward the last of the investigation.

Q. That is after the month of November, 940, is that correct?

A. I think it is somewhere along there; just exactly the date, I don't remember.

480 Q. Were you informed by Mr. Wise that Mr. Thomasma had gone to Mr. Wacker and confessed, so to speak?

A. I don't remember that, sir. I remember Mr. Wise telling me Mr. Thomasma had gone to Mr. Fidler.

Q. And did he tell you what happened there? That is just generally.

A. No, I don't believe he did. He must have told me something about it but just exactly what he told me, I don't remember now.

Q. And from then on there was a more friendly relationship with Mr. Thomasma, is that correct?

A. That is right.

Mr. Freeman: Have you got the original of the Thomasma affidavit? (Addressing plaintiff's counsel.)

Q. I hand you Thomasma's affidavit and will ask you to look at the signature page and will ask you whether you were present at the time Mr. Thomasma signed the affidavit? (Handing document to witness.)

A. I don't think so, Mr. Freeman.

Q. Do you recall taking Mr. Thomasma to a notary public in Des Plaines for the purpose of having the affidavit you hold in your hand executed?

481 A. I think you are right, yes, sir, now I recall it.

Q. Besides Thomasma, who else was there?

A. I don't remember. I think it was the man's wife.

Q. Thomasma's wife?

A. No, I believe it was the notary public's wife. Now, I remember this.

Q. And would you include in your expense report the notary fee?

A. I suppose I did.

Q. In other words, your expense report got down to such details as 25 cents for the notary's acknowledgment, did it not?

A. I don't think it was—whether it was itemized or not, I don't know sir. I certainly didn't pay it out unless I got it back.

Q. You kept pretty close track of what you spent?

A. Oh yes.

Q. And 25-cent items were kept track of the same as dollar items or five dollar items?

A. I might add 15 cents to it before I got through.

Q. Do you recall who else was present when the affidavit was signed or when you went with Mr. Thomasma to 482 the notary's office?

A. No, I don't sir. In fact, I had forgotten it until you reminded me of it.

Q. Do you recall now how the affidavit got into your hands so you could take it and Mr. Thomasma into a notary?

A. I believe it was given to me by Mr. Wise.

Q. Do you recall someone from Davis, Lindsey, Smith & Shonts' office coming out with the affidavit?

A. No, I do not, sir.

Q. And your recollection is that Mr. Wise gave you the affidavit?

A. I don't remember. I said I supposed I received it from him. I don't remember how I did get it now.

Q. You do recall being present when the affidavit was signed?

Mr. Lindsey: I object to all this.

The Court: I think he has been asked enough about the signing of that affidavit.

Mr. Freeman: Q. Who arranged for you to bring Mr. Thomasma into the office of Davis, Lindsey, Smith & Shonts?

A. I think I answered that. I think Mr. Wise did, sir.

Q. In other words, all of your directions in this case were given to you by Mr. Wise?

483 A. That is right.

Q. Did you receive any directions whatsoever from Mr. Fidler?

A. I don't believe I even talked to him about it, as I recall.

Q. Did you ever have any telephone conversations with him?

A. Not that I remember, sir.

Q. Did you ever report any of the information you obtained by telephone to Mr. Wise?

A. I might have. I don't remember.

Q. Do you know a Mr. Travis?

A. Yes, sir, I think so. Yes, I know I do. I met him.

Q. You met him in connection with this investigation?

A. That is right.

Q. And when was that?

A. That I can't remember, I can't recall exactly. It was during the investigation, I remember.

Q. Did anyone arrange for you to meet Mr. Travis?

A. I think I met him in company with Mr. Thomasma; in fact, we went over to his home for a social call.

Q. That is, you and Mr. Thomasma?

A. And Mrs. Thomasma.

484 Q. And Mrs. Thomasma?

A. And their little daughter.

Q. Do you recall when that was, that is, prior to November, 1940 or during the month of November, 1940 or thereafter?

A. I don't remember the exact date, sir; I don't remember just when it was.

Q. Was there any conversation at the meeting when you went over to Mr. Travis' home with respect to Mr. Thomasma going to Mr. Wacker or going to Mr. Fidler?

A. I don't remember that there was, sir.

Q. What is that?

A. I don't remember that there was.

Q. Was there any conversation between Mr. Travis and Mr. Thomasma with respect to this case?

A. I don't remember.

Q. When I say "this case," I am talking about the Interference.

A. There may have been. I just don't recall it now or what it was.

Q. It was just a social call so far as you can recall?

A. That is right. I had a very good dinner there, too.

Q. Who instructed the notary to put the notarial
485 seal on each of the eighty-four pages of the affidavit?

A. It must have been I. I took it over to him.

Q. And from whom did you receive such instructions if you recall?

A. Any instructions I got in the case at all were given to me by Mr. Wise.

Q. And likewise then you passed on to Mr. Thomasma the instructions that he date and initial each of the eighty-four pages of the affidavit?

A. I must have done so, yes, sir.

Q. Do you recall?

A. No, I don't but if it was done, it must have been at my direction and I must have received the information from Mr. Wise to have him do so.

Q. Did you receive any explanation as to why the notarial seal should have been on each of the eighty-four pages and why Thomasma should have initialed each of the eighty-four pages?

Mr. Freeman: We offer in behalf of the defendants as Defendants' Exhibit 21 the Thomasma affidavit referred to by the witness Baumann.

486 Mr. Lindsey: No objection.

The Court: As I understand, in a patent case, unless an objection is made, the offer is received.

(Said document, so offered and received in evidence was marked DEFENDANTS' EXHIBIT 21.)

Mr. Freeman: That is all.

Mr. Lindsey: No cross-examination.

Mr. Freeman: Mr. Wise.

Mr. Wise: Yes, sir.

Mr. Baumann: Mr. Freeman, do you want me any more?

Mr. Freeman: No, but we are perfectly willing to pay you for your time and witness fees.

(Witness excused.)

487 JOHN A. WISE, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your full name?

A. John A. Wise.

Q. And you operate as The John A. Wise and Son Advisory Counselors, do you not?

A. No, I just operate as John A. Wise. John A. Wise and Son, when I make out a statement, it gives me a great kick out of a wonderful dream I had of building an organization as John A. Wise and Son which never matured. I still have the stationery and I use that to present bills.

Q. Now, each of the invoices you rendered weekly to Mr. Fidler was on the—is under the heading of John A. Wise and Son?

A. Yes, sir.

Q. And you at that time had an office there at 20 East Jackson Street?

A. Yes, sir.

Q. Jackson Boulevard. And you still have on the directory board of that building, do you not, the name

488 John A. Wise and Son?

A. Yes, sir.

Q. And that is just the name under which you operate?

A. Well, I operate under the name of John A. Wise. I hope some day when the war is over to build this organization that that stationery was printed for.

Q. So, you operate as an individual?

A. Yes, sir.

Q. Do you have anyone associated with you in that business?

A. No, sir.

Q. And how long have you been in the business of being an advisory counselor?

A. Well, I have been with the firm of Davis, Lindsey, Smith & Shonts, I have been doing work for them since 1925.

Q. And going back to 1925, did you then operate under the name John A. Wise & Son?

A. In 1925, I was with the Burns Agency as a field

superintendent, selling service and took quite a large patent case for Mr. Lindsey and from that time on I did all of their work and worked principally all of my time for them.

Q. And you operate under the name of John A. Wise & Son?

A. No.

489 Q. When did you start operating under the name of John A. Wise & Son?

A. I started operating under the name of John A. Wise & Son, I believe, about 1933, I think.

The Court: May I inquire what difference it makes whether he operates under that name or not? He says it is merely a trade name. Does that have something to do with this case?

Mr. Freeman: No, I don't say that that would alone.

The Court: Let's get on to something else then.

Mr. Freeman: I am trying to go along as fast as I can. I am trying not to take any more time than absolutely necessary.

Q. Prior to Friday morning of last week, you had never met me?

A. No, sir.

Q. You had never talked to Mr. Ooms or any of the people referred to in connection with Mr. Baumann's testimony?

A. No, sir.

Q. Ever meet Kenneth Larson?

A. No, sir.

Q. Ever meet Walter Carlsen?

A. No, sir.

Q. Did you make any investigation at Des Plaines?

490 A. No, sir.

Q. That was carried on by Mr. Baumann alone?

A. Why, most all of the Des Plaines work was carried on by Mr. Baumann alone. There were occasions when I had something I wanted to find out later in the case where I used another man. He probably knew nothing about it. He didn't know anything about it.

Q. Who else did you use? Will you give us the name of the individual?

A. As near as I can recall, the man I used was—I will recall the name. I can't just recall it right now, sir. He is a sailor in the United States Navy but I will recall the name.

Q. You started on this Automotive-Precision investigation early in August, 1940, is that correct?

A. That is correct, sir.

Q. And your memory is refreshed from the invoice that I hand you, is that correct (handing paper to witness)?

A. That is correct.

Q. That is a photostatic copy, of course.

A. Well, that don't even improve my eyes, I have got to get specs. Yes, those are my invoices.

Q. And are they in your handwriting, while you
491 have them in your hand?

A. Yes, sir.

Q. I take it you do not have any stenographic force or any stenographers?

A. No, sir.

Q. Now, will you tell us in connection with this investigation what pretext you set up?

A. When I am given a case by anyone of the—for instance, we will refer to this case.

Q. That is all I want to know, in connection with this case.

A. I was called into Mr. Fidler's office and he told me he had some work he wanted me to do. It had to do with an Interference in the Patent Office; that the Automotive Machinery Corporation, I believe is the name, made a wrench with a gauge or something on it; that one of their best customers was a firm in Kenosha by the name of Snap-On; that Precision—that Automotive had lost that contract, principally all of the business, and that a firm in Des Plaines was now making that wrench and that the Des Plaines firm; one of their men was the holder of the patent that was in Interference.

I was given the name of Larson as an officer of that company and the owner of the patent and a man by the
492 name of Thomasma who was formerly connected with the Automotive Company and had something to do in the engineering division with the building of a similar wrench.

He asked me to find out the facts if I could as to—he gave me some dates I made notes of, I don't remember them now.

Q. Were you given any memorandums or written reports by Mr. Fidler—

A. No, sir.

Q. (Continuing.) —so that you might start your investigation?

A. I made—what necessary notes I wanted, I made myself.

Q. Now, I hand you some documents which have been marked for identification Defendants' Exhibit No. 13, and will ask you to look at them and tell me whether or not they were shown to you or given to you by Mr. Fidler at the outset in connection with your investigation?

A. No, sir, no notes were given to me or nothing written at all, sir.

Q. Will you look carefully at the last four pages and then give us your answer as to whether any notes or memorandums were given to you?

A. The last four pages. One, two, three, four. I will have the last one here in a minute. (Dropping papers.)
493 Nothing like that was ever given to me. It looks like something I gave them, that is, told them. I don't remember getting any such stuff.

Q. Well, now, will you go on and tell us what a pretext is?

A. Well, as I explained, when they called me in and told me what information they would like to find out, if possible, that was probably given to me—might have been, I don't recall exactly—might have been two weeks or three weeks, maybe four weeks before I started the investigation. I went on my own initiative. I may send a man. I may send a woman. I may send two, send them out to the vicinity. That would in that case be Des Plaines. I would want to know just what that company was. I would want to know who Larson was and who Carlsen was. I would want to know what their hobbies were, how they lived, and all about it.

When I learned all of that, from that I would form a pretext.

A pretext may be the arrangement of sending a man there as a real estate operator. I may send him there as a representative of a machine corporation. I may send him there as a whiskey salesman if their inclinations are to be tavern people. I may send him as a golf instructor
494 if their hobby is golf. If their hobby is trapshooting, I may send him as a trapshooter.

In building a pretext—when I say pretext, there are a lot of times through a lot of reports when I say expense and pretext.

Pretext may be a man having to spend some money going to a real estate man and finding out about property and use that in order to ask questions in order to get information and from the time I spend in getting ready to start the case and knowing just exactly where I stand before I start, I charge a fee for that, sometimes anywhere from two, three, five hundred dollars, or whatever it happens to be, whatever I have incurred, what I have used and what I think I am entitled to.

Q. Then the pretext doesn't necessarily cover an expense or cash out?

A. Yes, it does.

Q. How do you distinguish as to what is cash out in connection with a pretext and what is in connection with services?

A. Well, services are the days a man puts in. That is charged at a specific rate per day. Expenses, such as hotel, meals, incidentals, there would be laundry, all
495 the expenses a man would have, that would be expense.

Then we would have expense we would call a pretext where a man would have to go out of his general line of investigation to get some information he needs or some information to carry out—how should I say it—a front or pretext he is using to make the other fellow believe, as Will Rogers would say, he is something he ain't.

Q. What was the pretext set up in connection with the investigation of Precision and Kenneth Larson, this specific case?

A. I don't remember exactly. It seems to me he went out as a real estate man at one time, as a machinery representative. I don't recall just exactly what that was.

Q. Every time the man went out and spent a day, that was a service charge?

A. Yes, sir.

Q. Whatever his expenses were for that day, that would be expense?

A. Yes, sir.

Q. Tell me what brought about the expenditure you call "pretext"? He has been paid for his services and he has been paid for cash and expenses. I am still trying to find out what you mean by "pretext."

496 A. I thought I explained that to the best of my ability.

When we want to find information from a man, we have to do it in a way that is not going to injure the man or injure any of his reputation, if we happen to talk to his neighbors. We have to prepare our man to represent himself as something honorable and legitimate, whether it be an insurance man or automobile man or some other particular thing, so if questions are asked of the friends of this man, there will be reflection on the man himself.

That would entail probably of me using another person for an hour or three or four or incurring some extra expense, which we term as a pretext.

Q. You do that at the outset or start of the investigation?

A. I myself thoroughly know the lay of the land before I start any case. That is done before I ever start.

Q. And does the pretext continue then?

A. No, sir.

Q. It stops?

A. A pretext will continue, a pretext will probably continue through an entire case but it will probably be changed dozens of times.

Q. And you continue to charge for this pretext 497 from time to time?

A. We charge expense and a pretext, yes, sir.

Q. And the first expense item or an expense item of August 17, 1940, appearing on your invoice reads as follows:

"Expense and pretext up to and including August 17, 1940."

Are you now telling us that the expense of $557.85 was spent between the 10th of August and the 17th of August, 1940—

A. No, sir.

Q. (Continuing.) —in setting up this pretext?

A. No, I explained at the outset just how that—what might have taken two or three weeks before this thing occurred.

In small amounts like this, I sometimes finance it myself and won't collect until the case is started.

I probably worked or rather had work done maybe three weeks, maybe four, before the case started in order to find out where I was at.

Q. Do you have any records that would tell you when you first started on this job?

A. No, I haven't, sir. I keep no records whatever.

Q. You keep no diary?

A. No, sir.

Q. How do you charge for your time?

A. Fifteen dollars a day.

Q. I mean how do you keep track of your time?

A. It is kept track of from week to week.

Q. Every week cleans up and that is all there is to it?

A. Every week cleans up.

Q. You keep no records of what you did last week and the week before?

A. No, sir.

Q. Is there any reason for not keeping any records?

A. Well, I won't say there is any reason for not keeping them but I won't say there is any reason for keeping them. I do work for only one concern. I see them every day, practically.

Q. Is there any inquiry on the part of your clients or patron or customer as to what the expense covers?

A. No, sir.

Q. You just rendered the invoice for $557.85 expense and it was paid?

A. It was paid, sir.

Q. And that is true with respect to each of the in-499 voices that we have here?

A. That is correct, sir.

Q. And there was a sum total paid you for expense, prefext and services amounting to forty-seven hundred dollars and some cents and you have no records?

A. None whatever.

Q. And you never rendered any written report of any kind to the attorneys for Automotive?

A. No, sir.

Q. And you never rendered any written report of any kind to Automotive?

A. No, sir.

Q. The only thing in writing that either Automotive or its attorneys received from you were these invoices?

A. That is right, sir.

Q. And the only thing you received from either Automotive or its attorneys was a check in payment?

A. Each week.

Q. That is the sum and substance of the written documents that were given by you to the attorneys or to

Automotive and given by the attorneys or Automotive to you?

A. That is true.

500 Q. These checks and invoices?

A. That is correct, sir.

Q. Do you receive any memorandums from your investigators—from Mr. Baumann in this case?

A. The only memorandum I ever receive from Mr. Baumann would be on a Monday morning when he would report in the office which is when I paid him. He probably would have a slip showing his expenses and time put in. I would pay him cash and that was the end of that transaction.

Q. And you have no way of knowing whether the expense of $64.70 included on your August 31st statement covered Mr. Baumann's actual expenses or covered the pretext or what it covered, you have no way of knowing?

A. Well, I have been in this service so long I kind of have an old maid's intuition; I can pretty near tell whether the expenses are right.

Q. You can tell the expense for seven days is $64.70 and over there for another seven days $196.80?

A. I can't exactly tell but I can tell within a reasonable amount whether his expenses are right.

Q. It wouldn't make any difference whether the expense for one week period was $196.80 or $64.70?

501 A. Not a bit in the world because I would know what services he had rendered.

Mr. Lindsey: I object.

Mr. Freeman: Q. Service is one thing. I am trying to find out with respect to your pretext and expense and I am trying to find out just what took place and you are now telling us that as a result of an old maid's intuition you could tell whether the expense account was accurate or not?

A. After the man tells me what he found. In some of these instances, he probably left Des Plaines and came to Chicago. He probably made other trips around. He probably had to hire a cab. He probably had to use transportation. He probably had to talk to janitors or something of that sort. Well, we may use a janitor in a building to find out certain information about certain people in it or stuff of that kind, but the expense, when it is turned in, I know whether it is legitimate or whether it isn't, within a reasonable amount, sir.

Q. Would you look at the invoice of November 30, 1940 for services for two men, one week, $180, and then tell me what is meant by the expense item of $113.95? It is in your handwriting?

A. Sure, but I don't remember exactly just what
502 that covered. I know—well, it states here, "Expenses and pretext, lunches, and pay given to Mr. and Mrs. Thomasma."

What was the period of time, I won't say whether this is the time, there was a period of time there when I kept a man continuously, you might say, guarding Mr. Thomasma.

503 Mr. Freeman: Q. And who was that man?

A. Mr. Baumann.

Q. Well, his time is included on that statement.

A. His time is included on that statement. Then apparently I used—I am trying to think; your Honor, would it be a breach of court or anything, Mr. Baumann, if I asked him the name of a man.

The Court: Go ahead and ask him.

The Witness: Bill, down by the pier.

Mr. Baumann: Stanke.

The Witness: Yes; William Stanke; he is now in the United States Navy. I used him considerably on a lot of stuff.

Mr. Freeman: Q. Is that the reason why mention is made in that particular invoice, services for two men, $180.00?

A. Yes, sir; and that would be the expense of both men included.

Q. What about—isn't there the word car and storage?

A. Yes.

Q. Now, Mr. Baumann had no car; what storage was there, do you know?

A. Yes, I do; he paid storage on Mr. Thomasma's car. They put it in a parking lot, and I think there was a 50 cent storage charge; and he paid that.

504 Q. And was that item included in the expense report that was given you by Mr.—

A. I believe he bought some gasoline.—Yes, sir; I believe he bought some gasoline on the way down, and that is included.

Q. What else is included?

A. Lunches, I believe; and I believe some pay that he

gave Mr. Thomasma; I do not recall whether it was Mr. and Mrs. both; I think one time they each got paid a half day for going down.

Q. Do you know why it was necessary to pay Mrs. Thomasma?

A. She was working.

Q. For whom?

A. I don't know; my understanding is that she was working at that time.

Q. Now, why was it necessary to have a guard for Mr. Thomasma?

A. Well, as I understood it, Mr. Thomasma feared that he might be injured in some way; he might be attacked, or his home might be hurt, or he might be hurt. I believe he could tell you more about that than I can.

Q. You were not hired by Mr. Thomasma?

A. No, sir.

Q. He was one of the individuals that you were 505 investigating; is that correct?

A. That is right.

Q. Who asked you to guard him, so to speak?

A. Mr. Fidler, at Mr. Thomasma's request, as I understood it.

Q. Mr. Fidler gave you those instructions?

A. Yes, sir.

Q. How often would you report to Mr. Fidler as to what had taken place?

A. I would see Mr. Fidler every day, sir.

Q. Every day; and give him a report every day with respect to what information you were receiving from Mr. Baumann?

A. Which as I recall it now is one of the worst things I had to do; because this case, we failed to do very much; my main report was nothing.

Q. You gave him no information?

A. We just could not find very much of anything.

Q. You kept right on, and increased the number of men towards the tail end of the investigation?

A. Yes. After Thomasma—we had not done anything at all, much; I stepped into Mr. Fidler's office one morning, and he greeted me with the fact that I was a pretty rotten investigator; that what I was trying to find out, 506 the man came out to his home and told him.

Q. What were you trying to find out?

A. I was trying to find out just who might own this patent, if Precision did not; did anybody else have anything to do with it; did Thomasma have anything to do with it; what were the facts of the Precision.

Q. And Mr. Fidler told you that Mr. Thomasma had gone out to his home and given him the facts?

A. Yes; and then I told Mr. Fidler, I said, "Well, I guess my services on this case are over." He said, "I would say not; your services have just begun."

Q. Go ahead and tell us what he then told you.

A. Well, he said, "Your services have just begun." I said, "The man has told you the story." He said, "Well, I do not believe his story any more than I do anybody else. Now it is up to us to check his story and see if it is true." Which we did.

Q. You checked his story?

A. Yes, sir.

Q. What did you find?

A. Well, the more we checked, the more it looked like the other side had the edge on us.

Q. What do you mean the other side had the edge?

A. Well, we checked different people, that we either 507 could not find them or—

Q. Well, you checked somebody and didn't find them; you didn't get any information?

A. We checked some foundry, as I recall it. It seemed that his information was just what the other side said it was. We checked some garage man out near Des Plaines; his reaction was that the other side, what they had stated was true, the dates, or something of that sort. I just could not bring in much of value to Mr. Fidler; I never could bring anything that satisfied him.

Q. You yourself never went out to this plant?

A. No, sir.

Q. Did you ever go to Woodstock?

A. No, sir.

Q. Did you ever go to the Automotive plant?

A. No, sir.

Q. Did you ever talk to Wacker?

A. Never saw Mr. Wacker but once, and that was in Mr. Fidler's office, and that for a few minutes.

Q. All of your work was done by Mr. Baumann and these other individuals that you picked up occasionally?

A. Correct, sir.

Q. What was your job in this connection; what did you push?

508 A. I merely acted as an advisor, and handled the case itself. That is, a lot of times I decide a case is not worth investigating, and do not make investigation. In this case, as I told you, I looked into it, I tried with every possible means to find true facts, which I was practically unable to find.

Q. You were the go-between?

A. That is right.

Q. Between the investigator that you hired and Mr. Fitter?

A. That is right, sir.

Q. And you were the one that a few moments ago said that you had to be satisfied at the outset, before you set up the pretext in order to get the information you wanted?

A. That is right, sir.

Q. Now, can you tell me what you personally did to satisfy yourself in order to set this pretext and start the investigation?

A. I didn't do anything, sir; I just looked into the matter, by sending people to find out, as I explained in the start, who Larson was, and Carlsen was, and Thomasma was; just what their habits were, and all about them. Then I sent a man out to check around, to see if he could

509 find any person, or any person that could tell us anything, that could tell us anything that would lead these two people, that the dates they gave were not correct, or were correct; it doesn't make any difference to me whether it is right or wrong, it is just what is.

Q. And you sent Mr. Baumann out?

A. I did.

Q. Whom did you send out before you put Mr. Baumann on the job?

A. I do not recall who I had check it. I seem to recall using a man by the name of Nogger; I had a young fellow that is now an engineer in the Army. This man Stanke, now I want this understood: This man Stanke that I am referring to, and when I refer to the name of Nogger, that is the man I believe, Nogger,—on investigation I could find; I think they could be found. I am not using names that are just coming up; I am not sure whether I used Mr. Stanke or Mr. Nogger out there, sir; I don't know just which I use?

Q. Now, this service charge on here, on these invoices, that was for Mr. Baumann's time?

A. Yes, sir.

Q. How about your service charge?

A. Seven and one-half of that goes to me.

510 Q. Half of that goes to you, and half went to the other individual?

A. The investigator.

Q. So that when your say services up to August 17th, 1940, $90.00, that covered yourself and occasionally Mr. Baumann?

A. Yes, sir.

Q. Whenever you had the services of some one else, you put that in under pretext?

A. No; no, you will notice where I used two people and charged for them, I charge $15.00 a day for each person; I charge $90.00 a day, and therefore make $15.00 out of it.

The Court: $90.00 a week.

A. A week; I am sorry.

Mr. Freeman: Q. You didn't have the use of two people until along late in November and December.

A. That is right.

Q. I understood you to say a few minutes ago that this pretext, or setting it up, or finding out to satisfy yourself, that you used this man Stanke.

A. That is under the charge that I made, of partial retainer, $500.00; that covers that.

Q. Oh, we now have a retainer for $500.00?

511 A. Well, whatever you want to call it; just pick out your word, and it will be that. It is money that I received, sir.

Q. I am not trying to quarrel;—

A. No, whatever you wish to call it. I received $500.00, and that covered my time and expenses, or what persons I might use before I start in the case.

Q. And that is called pretext?

A. I use that word, sir; it could be called retainer; it could be called that.

Q. However, when you in November and December began using two people, you then charged for services of two people; that is $180.00?

A. I started charging for people the minute I started the case officially.

Q. Mr. Wise, did you ever send a man up to Woodstock?

A. I do not recall ever sending one.

Q. Were you ever informed by Mr. Fidler that you should investigate Mr. George B. Thomasma?

A. That I should investigate?

Q. Yes.

A. Yes, sir.

Q. And were you given any of the reasons why Mr. Thomasma had been discharged on June 5, 1939, from the Automotive?

512 A. No, sir.

Q. He just told you to investigate him, and nothing else?

A. They told me to investigate him and his connection with Precision.

Q. And when did you last talk to Mr. Fidler about this case?

A. A week ago, I believe.

Q. At the same time that Mr. Baumann was present?

A. No, I think I talked to him a day or two after that, sir.

Q. Do you work pretty much out of that office, Davis, Lindsey, Smith & Shonts?

A. Continuously, sir.

Q. And you are there every day?

A. Yes, sir.

Q. Do you have any office space there?

A. No, sir.

Q. And when did you talk to Mr. Lindsey last?

A. Oh, I think the last time I talked to Mr. Lindsey is when he—the last time I talked to Mr. Lindsey anything about this particular case is when he told me that you wanted to see me to question me on some reports, or something.

513 Q. And at that time I asked you whether you had any records, and you told me you had none?

A. That is right.

Q. And I then asked you if you would appear before his Honor Judge Igoe on Tuesday and tell the Judge the same thing?

A. That is right, sir.

Q. And you did not make any search for any records at all?

A. Well, I have no place to search, sir, outside of a brief case in which I carry some stationery. I keep no records of any kind.

Q. The only stationery you really carry is your invoice stationery?

A. That is right; my pets.

Q. That is, your invoice stationery?

A. That is right; because I work for only one place.

Q. During the period of the investigation; that is, between early in August, 1940, and January, 1941, did you talk to Mr. Lindsey?

A. No; Mr. Lindsey, I had nothing to do with in this case.

Q. All of your conversations were with Mr. Fidler?

A. Yes, sir.

514 Q. By the way, when you made your reports to Mr. Fidler practically each day, was that taken down stenographically?

A. No, sir.

Q. Was any one else present, outside of Mr. Fidler and yourself?

A. Not to my knowledge, sir.

Q. Were any notes made?

A. I have tried to recall of him making notes; I do not recall of him making any notes. He might have taken a pencil and made a note or two, I do not recall it, sir. Because there was so little obtained, so much work trying to obtain and no results for weeks and weeks.

Q. Who told you that there were no results obtained?

A. Well, I did not get the results from the investigators, so there wasn't any.

Q. And they kept right on investigating?

A. Trying, yes.

Q. Week after week?

A. Week after week.

Q. So that the sum and substance of the $4700 expenditure is nothing more than word of month, with respect to any reports of any kind?

A. That is right, sir.

515 Q. And the sum and substance of the investigation was practically nothing, as far as you are concerned?

A. Very little of any value, sir.

Q. Had you discussed that recently with Mr. Fidler, about the results that you obtained in relation to this investigation, made some three years ago?

A. No, sir; the only things Mr. Fidler told me was to use my memory and tell whatever I was asked, to the best of my abilfty.

Mr. Freeman: That is all.

Cross-Examination by Mr. Lindsey.

Q. Mr. Wise, you first had talked with me about 1925, did you not?

A. Yes, sir.

Q. And do you recall about that time I was involved in a great deal of litigation, involving the Motor Meter, and I was representing New York counsel.

Mr. Freeman: That is objected to. We concede that he met him in 1923; and there isn't any question about it.

Mr. Lindsey: May the Court please, I am only going to ask a very few questions of this witness, and they all have to do with this matter of not rendering reports;
516 and all of these questions, the questions Mr. Freeman directed, it relates directly to that subject.

Now, will you please read the question?

(Question read by the reporter.)

The Court: The objection will be overruled.

Mr. Lindsey: Q. Will you answer the question, please, Mr. Wise.

The Witness: A. Yes, sir.

Q. And do you recall that at that time I told you that I had a number of other investigators who had been working on several of these cases, some of which had to do with the counterfeiting of the Motor Meter; and that I objected strenuously to these long detective reports as to what time they got up in the morning, what they had for breakfast, and how they trailed the suspect, or the object of their investigation; and I didn't want to pay for that kind of report; do you recall that?

A. I do, sir.

Q. And you have conducted quite a few investigations for me in the last eighteen years, have you not?

A. Yes, sir.

Q. And you have purchased some patents for my firm, have you not?

A. Yes, sir.

517 Q. And you have done some investigating on Mr. Fidler's work, have you not?

A. Yes, sir.

Q. And on Mr. Frank Parker Davis' work, have you not?

A. Yes, sir.

Q. Now, during these past eighteen years, what has been your practice about giving me written reports?

A. I didn't give any; I came in and told you the facts.

Q. And if I wanted any report to send to the client, what would I do?

A. Call in a stenographer and sit down and dictate it from what I told you, write a letter—

Q. Pardon me; were you finished?

A. Yes; I said you would write a letter.

Q. Now, with respect to these invoices, it has been your practice for the last ten years, we will say, with respect to making out invoices to our firm, or members of the firm for whom you have done work?

A. Why, I just make out the invoice and take it over and walk into your office, and pull it out of my pocket and say, "I have the invoice here for last week." You look at the amount and say, "Go to the cashier with it."

Q. And do you know of any occasions when I, in particular, have told you to go ahead and take it to the
518 bookkeeper, that I was not even going to examine it?

A. You always do that, sir.

Q. Without even looking at the amount, at times?

A. Yes, sir.

Q. Did I ever tell you that I had implicit confidence in your integrity and honesty, as to these services and expenses which you invoice me for?

A. Yes, sir.

Q. Did we ever complain about any of your invoices; did I,—the size of them?

A. Well, I am under oath; I guess I will have to answer the truth: You have complained sometimes about them being too low.

Q. And you see me very often in the office, do you not?

A. Every day.

Mr. Lindsey: That is all.

Redirect Examination by Mr. Freeman.

Q. Did Mr. Fidler ever complain about any of the invoices that you rendered in this case?

A. No, sir.

Q. Did he ever tell you that the Automotive Maintenance were complaining about the expense that this case was runing into?

519 A. No, sir; he never told me that.

Mr. Freeman: That is all.

(Witness excused.)

Mr. Freeman: We offer in evidence as Defendants' Exhibit No. 26, a series of invoices of John A. Wise, starting with August 10, 1940, and ending with January 4, 1941.

The Court: There is no objection; they may be received.

(Said invoices, so offered and received in evidence, were marked DEFENDANTS' EXHIBIT NO. 26.)

Mr. Ooms: Mr. Krichiver, will you please take the stand?

520 DAVID M. KRICHIVER, called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ooms.

Q. Mr. Krichiver, will you please state your name?

A. David M. Krichiver.

Q. What is your address?

A. My office address is 139 North Clark Street, Chicago, Illinois.

Q. You are an attorney at law?

A. Yes, I am.

Q. Do you recall in November and December, 1940, that you represented George M Thomasma?

A. November, 1940?

Q. Yes.

A. Yes, I do.

Q. I want to call your attention to a meeting at the home of Mr. Fidler on a Sunday evening in November, 1940; do you recall that meeting?

A. Yes, I do.

Q. Do you recall the date of it?

A. That was November 3, 1940.

521 Q. How did you get there?

A. By automobile.

Q. Well, who arranged for it?

A. I remember that date particularly, because that was the date my cousin was being married. Early that day I received a phone call from my client—

Q. That is George Thomasma?

A. That is right;—saying that he wanted to have a meeting at the home of Mr. Fidler at 5:00 o'clock that evening. Well, that hour conflicted with the wedding arrange-

ment. And I told my client that it was not convenient for me to be there at that time, and that I would arrange another hour.

I made several telephone calls; I arranged that meeting after 8:00 o'clock that evening.

Q. Whom did you call to reset that meeting?

A. Oh, I made a series of calls; I spoke to Mr. Fidler, and I spoke to my client.

Q. Had you previously talked to Mr. Fidler?

A. Yes.

Q. When?

A. I had spoken to Mr. Fidler in his office some time prior to November 3, 1940; I do not recall the exact date.

522 Q. About how long before November 3?

A. Oh, it was a short time; within maybe two weeks, three weeks; possibly a month. I do not recall.

Q. What was the subject of your conversation at that time?

A. The first time, or at Mr. Fidler's home?

Q. At his office, the previous time.

A. At his office—the first time I was at Mr. Fidler's office I tried to sell him or his client some stock that my client owned in the Precision Instrument Manufacturing Company.

Q. How many shares of stock did you have?

A. My client, I think, owned 260 shares of stock.

Q. You also had five shares at that time, did you not?

A. Yes.

Q. Did you try to sell yours also?

A. Yes, that would have been included.

Q. And what inducement did you offer them to buy that stock?

A. Inducement,—there wasn't any special inducement for the purchase of the stock; I thought it was of value to them, because I knew they were having some trouble with Precision Instrument.

Q. Did you know the nature of that trouble?

523 A. I knew it involved a patent matter, but what it was, I didn't know exactly.

Q. Did you know Mr. Thomasma's connection with that matter?

A. Oh, yes.

Q. What was his connection?

A. His connection with the Precision Instrument Company was a stockholder; and he was on the outside, trying to get in; but Mr. Kenneth Larson and Mr. Walter Carlsen of the company were keeping him out.

Q. Did you know his connection with the patent matter, which you say you knew was in controversey between Fidler's client and your client?

A. Well, I knew of it; I don't know how else to explain it.

Q. Did Thomasma tell you the facts?

A. Well, he told me when he first came to me and we had our interview at my office, he gave me the historical background of his connection with the Precision Instrument Company.

Q. How long before these meetings, or this meeting in November, was that?

A. Oh, I think that was maybe February, March, April of 1940; I don't know.—I have my file here Judge, if I
524 can look at that I may recall.

The Court: Go ahead.

The Witness: I do not have my diary here, though.

Mr. Ooms: Q. Look at the documents.

The Witness: A. It was prior to April, 1940; because on April 17th, 1940, I wrote him saying that he had been in my office a short time ago to consult me about Precision Instrument Company; asked him if there had been any new developments, and if so, to advise me. That was April 17th, 1940; so that shortly prior thereto he was in my office for the first time.

Q. And then did you subsequently procure this five shares of stock that you own?

A. Yes.

Q. And you attended a stockholders' meeting in the summer of that year, did you not?

A. Yes, I remember that very well.

Q. Now I want to bring you to about the time of November 3; did you voluntarily call Mr. Fidler, or did somebody send you, or did Mr. Fidler call?

A. No, I called Mr. Fidler.

Q. At whose suggestion?

A. That was because my client was going to have this meeting at 5:00 o'clock, and wanted me there; and I
525 could not make it, so I called Mr. Fidler.

Q. That was on Sunday, November 3?

A. That is right.

Q. Or Saturday, November 2; one of the two?

A. No, that was Sunday, November 3.

Q. The earlier meeting you had with Mr. Fidler, how was that arranged for?

A. Well, I had written a letter to Mr. Wacker at Automotive, asking if I could have a meeting with him.

Q. Do you have a copy of that letter there?

A. I am looking for it now; yes, that was on June 17th, 1940.

Q. May I examine this?

A. Surely.

Mr. Ooms: May I read this into the record, your Honor, —and the witness can keep his file straight.

The Court: Go ahead.

Mr. Ooms: "June 17, 1940. Automotive Maintenance Machinery Co., 2100 Commonwealth Avenue, North Chicago, Illinois. Attention Frederick G. Wacker. Gentlemen:

"I am interested in Precision Instrument Manufacturing Company at Des Plaines, Illinois. I understand that you are also interested in the same concern.

"I would greatly appreciate your arranging a meeting between my self and one of your executive officers, pre-
526 ferably your president. Kindly advise me. Respectfully yours,"—

Q. At whose suggestion was that written, Mr. Krichiver?

The Witness: A. Oh, I do not recall anybody making a suggestion that I write to Mr. Wacker. I was attempting to dispose of my client's stock in the company, and I had an idea that Mr. Wacker would be a prospective purchaser; so I wrote that letter.

Q. Why did you think he would be a prospective purchaser?

A. Well, on our conversations, between my client and myself, I knew that both AMICO and Precision were making wrenches, and that Automotive was attempting to knock out the Precision wrench. And I tried to sell the stock to them, so that they could become stockholders in the corporation and would know what was going on.

Q. Had Thomasma told you what the situation was with respect to the Larson Patent Application of the Precision Instrument Company?

A. Will you repeat that?

(Question read by the reporter.)

A. Oh, it had been mentioned in our conversations, but he was not an attorney and didn't know what the situation was. I got no information from him as to what the status of the proposition was.

527 Q. Did he tell you the status as to who invented that wrench, and things of that kind?

A. Oh, he told me he claimed to be the inventor of it.

Q. Did he tell you anything about the Interference in which it was then involved, with Automotive?

A. No, he never used the word Interference; I don't know that he knew what it meant.

Q. Did he tell you anything about the fact that Larson and his associates were claiming that it was invented in 1934, whereas in fact it was invented later?

A. Did he tell me that?

Q. Yes.

A. I don't think so; I don't think he ever told me anything about it.

Q. What reply did you get from Automotive, or Mr. Wacker, to your letter of June 17th?

A. I received a reply from Mr. Wacker's secretary telling me that Mr. Wacker was out of town, and that he would contact me later.

Q. May I see that a moment?

A. Yes.—What was the date of that other letter?

Q. June 17th, 1940.

A. Yes; here it is. (Handing document to counsel.)

Q. Now, what occurred after you received the letter from Mr. Wacker's secretary, telling you of his ab-

528 sence?

A. If I remember correctly, I got a telephone call.

Q. From whom?

A. From Mr. Fidler.

Q. What was said?

A. I think at that time—this is to the best of my recollection, Judge; it has been so long ago—I think he advised me that he represented Mr. Wacker, and we arranged for an appointment at his office.

Q. And you went to his office?

A. That is right.

Q. Do you know when?

A. I don't know the exact date; it was shortly after June 18th, 1940.

Q. And tell us as nearly as you can your conversation, when you went to his office in response to his telephone call.

A. Well, at his office, meaning Mr. Fidler's, I offered them this stock that my client and I owned in Precision Instrument. I thought it would be to their best interests to own this stock; I thought it was a good investment for them.

Q. Had you ever been paid any dividends on it?

A. No.

Q. Did you know anything of the financial condition
529 of the company?

A. Yes, a little bit, I think. Because I had a statement—Now, I don't know whether this had been sent to me; I think this was given to me when I first talked to the client.

Q. Never mind the financial statement; but when you went to see Mr. Fidler, presumably some time in June or July, 1940, did you have any information as to the financial condition of Precision?

A. As I say, I had the financial statements; one is a condensed balance sheet, and the other is a condensed statement of profit and loss, which were issued by the Precision Instrument Manufacturing Company.

Q. Did you discuss those with Mr. Fidler?

Mr. Lindsey: I am going to object, your Honor; I don't think this has anything to do with the question of perjury, or compounding of perjury.

Mr. Ooms: I think we are getting right at the—I am trying to get in as to what the conversation was on that date.

The Witness: A. What date did I say it was, shortly after we had a meeting?

Mr. Ooms: Q. Shortly after June 17th.

A. June 17th; prior thereto I had taken an account
530 and out to Precision Instrument Manufacturing Company, and we had made an examination of the books and records.

Mr. Ooms: Q. And when you say Mr. Fidler, when you saw Mr. Fidler, did you discuss the financial condition of Precision?

A. I do not recall.

Q. What did you tell him about the stock?

A. Conversation verbatim?

Q. No, in substance.

A. I do not recall whether I asked him for a definite

price or not; I asked him if they were interested in acquiring the stock that we had, and they were not.

Q. Did you tell him anything about Thomasma?

A. About him owning stock?

Q. Yes.

A. No, I did not disclose the ownership of that stock at that time.

Q. Did you tell him that you represented Thomasma?

A. I do not recall; but I don't think so.

Q. Did you discuss his so-called patent matter, that you knew they were involved in with Automotive?

A. I don't know; we might have. I don't know.

Q. What inducements did you offer him to purchase either your stock or the 260 shares of Mr. Thomasma?

531 A. As I recall now, the only inducement offered to him for the purchase of this stock was that he could be a stockholder in the corporation.

Q. And thereby find out what was going on?

A. He could do whatever he wanted with it after that; it was no concern of mine.

Q. What reply did he offer, to the sale of the stock?

A. They were not interested.

Q. Did he tell you they were in legal difficulties with the Precision at that time?

A. He might have; I don't know. I don't remember.

Q. And when did you next hear from Mr. Fidler or Mr. Wacker, or anybody connected with Automotive?

A. I don't think that I had talked to Mr. Fidler again, or anybody connected with Automotive, until that November date.

Q. November 3, the Sunday evening?

A. Yes; I think that is correct, now.

Q. Did you exchange any correspondence with them?

A. Prior to November 3?

Q. Yes.

A. I don't think so. If I did, I would have it in my file.

Q. Your file is complete, that you have before you?

532 A. Yes; everything that I have in connection with this matter is right here.

Q. You find no further correspondence of the character I indicate?

A. No, I do not. All my dealings thereafter were with the Precision Instrument Manufacturing Company.

533 Q. Mr. Krichiver, when we closed this morning we were getting to that meeting of November 3rd, 1940.

at Mr. Fidler's house. When was the first time you learned that that meeting was to be held?

A. Oh, some time early that Sunday afternoon or morning, I don't recall which.

Q. You had an appointment the previous day, November 2nd, with Mr. Harry Alberts, did you not?

A. You say November 2nd?

Q. Yes.

A. 1940?

Q. Yes.

A. No.

Q. You had made an appointment with him for a Saturday afternoon at two o'clock, had you not?

A. Yes.

Q. What Saturday afternoon was that?

A. That was Saturday, November 9th.

Q. The following Saturday?

A. That is right.

Q. And that appointment was never kept?

A. I called Mr. Alberts' office and told him that we
534 were not coming in.

Q. When did you call him?

A. I think it was on Saturday, November 9th.

Q. A little after the time for the appointment to be kept, wasn't it?

A. I don't think so. No.

Q. Why was it cancelled?

A. My client called me and told me he couldn't come in.

Q. The first you heard then of the November 3rd meeting was on that day?

A. That is right.

Q. And Mr. Thomasma picked you up at the wedding toward eight o'clock and drove you to Mr. Fidler's home?

A. That is right.

Q. What time did you arrive there?

A. It was approximately eight o'clock, I don't recall.

Q. Who was there?

A. Well, there was myself and my client, Mr. Thomasma. Mr. Fidler was there, Mr. Wacker was present at the conference. Whether he came before us or after us I am not sure. And there was a Mr. Travis. Whether he came before or after us I don't recall.

Q. Had you met Mr. Wacker prior to that time?

A. Oh, yes, I met Mr. Wacker for the first time in
535 Mr. Fidler's office at that conference I told you about.

Q. When you attempted to sell your stock to them?

A. That is right.
Q. And they turned you down?
A. Yes.
Q. What was the purpose of this meeting Sunday night?
A. We were again making an attempt to sell them our stock.
Q. Had you ever fixed the price to them?
A. No, sir.
Q. Had you met Mr. Travis before that night?
A. No, I had not.
Q. Who opened the conversation, and, as fully as you can, tell us what occurred there.
A. I don't recall exactly who opened the conversation. I know at that meeting we again attempted to sell our stock to the AMMCO, the Automotive, and they didn't want to buy it.
Q. How long were you at that meeting?
A. Not very long. I think we were there less than an hour. I had to get back to the celebration. As it was, I missed the dinner.
Q. You think you left there about nine o'clock?
A. Not later than nine.
535 Q. Do you know when Mr. Travis arrived?
A. No, I don't but he was there during our conference.
Q. And he remained there when you left?
A. I think so, because I left with my client.
Q. What did you tell these people about the Precision Company and about the stock you were trying to sell?
A. Well, so much time had elapsed between our first meeting in Mr. Fidler's office and this meeting at his home that I had acquired a little more knowledge of the difficulties between Precision Instrument and AMMCO. I knew that they were having some difficulty in a suit that was pending. We offered them the stock. I don't think a price was set at all. But they refused to buy it.
Q. What did you say when you offered them the stock?
A. I don't recall the exact conversation. It is over three years ago.
Q. Did you tell them that Larson's Patent Application was a frame up and that Snap-On Tools was back of the whole thing, and that Thomasma had developed the wrench and that he had turned it into the Precision Instrument Manufacturing Company for the stock you were trying to sell?

A. No, I never used the word "frame up."
Q. What did you tell them?
A. And I didn't make that statement that you were reading there.
537 Q. What did you tell them about Larson's Patent Application?
A. I don't recall that I said anything at all about the Patent Application. I may have, but it has been so long ago that I don't recall.
Q. Didn't you tell them that if Thomasma got on the witness stand and had testified in accordance with the facts he would thereby destroy the value of his stock and that he, therefore, thought Automotive should purchase it?
A. Did I tell them that?
Q. Yes.
A. No.
Q. What did you say about that stock?
A. I don't recall the exact conversation, it has been so long.
Q. Tell us in substance what you told them as the inducement for the purchase of that stock.
A. At that conference, my best recollection is that we again tried to get them to purchase that stock so that they could become a stockholder in the company, and I don't recall exactly now whether or not anything was said about Thomasma's stock becoming valueless if he testified, because we knew eventually he was going to have to testify.
538 Q. What did you know that he was going to have to testify to?
A. Did I know what he was going to have to testify to?
Q. Yes.
A. I didn't know what the attorney was going to ask him.
Q. You knew the facts that were discussed at that meeting on November 3rd, did you not?
A. Oh, I was there, certainly.
Q. And Mr. Thomasma told the facts, didn't he?
A. No, I did most of the talking.
Q. And what did you tell them about that Larson application and the facts about it?
A. I don't recall.
Q. You don't recall anything of that?
A. No, sir.

Q. You don't recall that you told them that Thomasma did most of the work on that wrench?

A. I don't think so, that I disclosed that information.

Q. You just told them, "We have got this stock and we would like to have you buy it"?

A. Well now, I have answered before, I don't recollect the exact conversation.

Q. Do you recall anything that Thomasma said at that meeting that night?

539 A. No, I don't. My client did very little talking, on my instructions.

Q. Do you recall anything that Mr. Wacker said that night?

A. I think one of the reasons they didn't want to buy the stock was they were afraid it was going to look as though they were paying us for testimony.

Q. They knew what that testimony was to be, did they not?

A. I don't know.

Q. You told them and discussed the facts there that evening, didn't you?

A. No, that is not what I said.

Mr. Lindsey: Is this cross-examination or direct examination? Let us get this settled. I object, your Honor.

Mr. Ooms: I think the witness' lack of recollection entitles me to lead a little bit. He says he has no recollection of the meeting. It was an important meeting, on a Sunday evening at this lawyer's house.

The Court: He has told you two or three times he can't recall what he said.

The Witness: Your Honor, I have no interest in the outcome of the suit either financially or any other way, and I am doing the best I can.

540 Mr. Ooms: I appreciate that.

The Court: That is all you are bound to do.

Mr. Ooms: I am sorry I am a little impatient, your Honor, but—

The Court: I think you have asked him that question at least three times and the answer has been the same each time.

Mr. Ooms: Q. Do you remember what Mr. Wacker said that evening?

A. I think I have answered that question once. He refused to buy the stock. He was afraid as though it would look as though they were paying us for testifying.

The Court: Who is "us," Thomasma—

The Witness: Yes. I mean my client.

Mr. Ooms: Q. You were offering your stock that evening also, weren't you?

A. Oh, yes.

Q. Do you recall that somebody said there that night that Thomasma had developed the wrench that was covered by the Larson application?

A. I don't recall that being said at that meeting.

Q. Do you recall any discussion about who developed the wrench, that wrench?

A. No, I don't.

541 Q. Well, do you recall any discussion as to the reasons why they might be charged with purchasing testimony if they did purchase the stock?

A. Will you read that question?

Mr. Ooms: Will you read the question, please?

(The last question was read by the Reporter.)

The Witness: The only thing I recollect, that our deal was that eventually my client would have to testify and—

Mr. Ooms: Q. And that testimony would be—

A. —and they didn't want to purchase our stock under those circumstances for that reason, that it would look as though they were paying for his testimony.

Q. Was that testimony favorable or unfavorable to Automotive?

A. Do you mean would it be favorable or unfavorable?

Q. Yes.

A. I don't know.

Q. You don't know?

A. I don't know. It is hard to say.

Mr. Lindsey: I think he has answered the question, your Honor.

The Witness: I don't know all the facts in the case.

Mr. Ooms: Q. Do you recall what Mr. Fidler said there that evening?

542 A. His attitude was the same as Mr. Wacker's. They didn't want to buy our stock for fear that it would look eventually as though they were purchasing our testimony, and by that I mean my client's.

Q. Do you recall Mr. Wacker and Mr. Fidler both reviewing all of the facts with relation to that Larson application?

A. There might have been some conversations that way. I don't recall exactly.

Q. Well, do you recall any of the substance of it?

A. No, I don't, not outside of what I have already stated.

Q. You left that meeting with Mr. Thomasma toward nine o'clock?

A. Yes, I left with him.

Q. Did you spend any time with him after that?

A. Only the time we spent in his automobile while he drove back to the hotel.

Q. Did you know why Travis was at that meeting?

A. Travis, I understood, was a mutual friend of Mr. Wacker's and Mr. Thomasma's.

Q. And you had never met him before?

A. No, I had not.

Q. Did he enter into the discussion at that meeting?

A. I don't think so.

543 Q. And after you left Mr. Thomasma that night did you have any further relations with Mr. Wacker or Mr. Fidler?

A. Yes. I was at Mr. Fidler's office once after that.

Q. When was that?

A. That was sometime during the following week. I think it was on a Thursday.

Q. In what connection?

A. I went back again to see if I could induce him to change his mind.

Q. About what?

A. About the purchase of this stock.

Q. That was on Thursday, the 7th of November?

A. If that is the date of the following Thursday, I think so. I think that is the date.

Q. Did you talk to Thomasma in that interval between Sunday and Thursday?

A. I don't think so. I wrote him a letter, reminding him of our appointment with Mr. Alberts that following Saturday, and then he subsequently called me up the next day, telling me that he couldn't come in.

Q. Did you know, when you saw Mr. Fidler on Thursday, that Mr. Thomasma was going to see him that night?

A. No, I didn't know that.

Q. Mr. Thomasma didn't disclose to you that he
544 was having these other meetings?

A. No, I didn't know that.

Q. Did he disclose to you that he had sent a mes-

sage to Mr. Wacker by Mr. Travis on Monday, the 4th of November?

A. No, I didn't know that.

Q. And you were rather flatly turned down on Sunday night at this meeting at Mr. Fidler's home, weren't you?

A. I don't understand who you mean by the term "flatly." I mean they refused to buy it. It was a very pleasant time I had there. It was a rather sociable evening.

Q. And they told you the reason they wouldn't buy it was because it would react upon Thomasma's testimony?

A. That is right. They were afraid that if it was brought out that—

Q. What occurred between then and Thursday to make you think they might change their mind about purchasing the stock?

A. Right now I don't know of anything that had occurred between that Thursday and Sunday which made me think I might induce them to buy it, but I certainly wasn't passing up an opportunity. I mean I was still after them.

Q. You went to see them on Thursday at your own volition?

A. I think so.

545 Q. Did you tell Mr. Fidler you had an appointment with Mr. Alberts for Saturday?

A. I don't think I did.

Q. And they refused to buy the stock again on that Thursday, November 7th?

A. Oh, yes.

Q. Was Mr. Wacker at that meeting or not?

A. No, he wasn't.

Q. Did Mr. Fidler tell you he was to see your client that night?

A. No, sir, he didn't.

Mr. Fidler: He already has asked that question three times, may your Honor please.

Mr. Ooms: I don't think I did, but I may forget now and then. I haven't the perfection of memory that some of these gentlemen have.

You see, the interruption costs me more time than the question.

Q. You left Mr. Fidler then on Thursday, November 7th, after he had declined to buy the stock?

A. Yes.

Q. When was the next time you met him?

A. I don't think I saw Mr. Fidler after that until, oh, sometime last week. Possibly two days before you
546 called me, or you were in my office.

Q. Did you talk to him then when you saw him last week?

A. Oh, yes.

Q. At some length about the facts?

A. Well, he was in my office with Mr. Hibben—

Q. And you had a long conversation?

A. —and I think they came in about three o'clock and left about four-thirty.

Q. And I called you last week and asked you to talk to me, didn't I?

A. You were in my office with another gentleman whom I subsequently found out was Mr. Freeman.

Q. That is correct.

A. And I called you the next day because you had left your card. You were out. Then you called me back.

Q. And you said that you had instructions not to talk to me?

A. Yes, I had instructions from my client not to talk to you. I told you at that time—

Q. You very courteously declined to have me interview you on that subject?

A. I spoke to you.

Q. Did you have any further communications with Automotive or Mr. Wacker after that night of November 3rd?

547 A. I don't recall any.

Q. When did you learn that Mr. Thomasma had executed the affidavit that he executed on November 15th, 1940?

A. I didn't learn of that affidavit until just shortly. I don't think that I had ever heard of that affidavit until I was here in Court today.

Q. Did you know that Mr. Thomasma was in the company of Mr. Baumann a large part of that time in November, 1940?

A. My client first called me and said there was a Mr. Baumann who was circulating around in Des Plaines, represented himself to be some manufacturer's representative, some company that operated in New York, wanted me to find out who he was and if he was the manufacturer's representative from this certain company. I wrote to some corresponding attorneys in New York whom I had done

business with, asking if there was such a company, if there was a Mr. Baumann connected with the company. They answered and said there was no such company and there was no such Mr. Baumann, as far as they could ascertain.

Q. Did Mr. Baumann figure at all in this meeting of November 3rd, 1940? Was he mentioned?

A. No, not to my best recollection.

Q. And that is about all you had to do with Mr. Baumann's attending Mr. Thomasma?

548 A. I knew Mr. Baumann was operating in Des Plaines after that.

Q. That is about all?

A. I had an idea he was an investigator representing AMMCO, AMMCO's interests.

Q. Did you know the facts that he was looking for?

A. I didn't know what facts he was looking for.

Q. As I understand it, you have no recollection today of ever having discussed the facts with relation to Thomasma's participation in the invention covered by the Larson application with Mr. Fidler or Mr. Wacker?

A. In making my attempts to sell this stock so that my client could realize some financial return for the time he has put in, I wasn't going to disclose any information which would destroy the value of that stock.

Q. You knew that the information was of such character that it would destroy the value of the stock, didn't you?

A. No, not definitely.

Q. When did Mr. Thomasma instruct you not to discuss this matter with me?

A. After you had left your card at my office, I think the following day, he called me, and I spoke to him.

Q. That was last Tuesday?

A. Well, it was the day after you were in my office.

549 If you were in there Monday, then it was Tuesday I spoke to him. If you were in there Tuesday, then it was Wednesday I spoke to him.

The Court: If it was Wednesday, then it was Thursday?

The Witness: That is right, your Honor.

Mr. Ooms: That is all from Mr. Krichiver.

Mr. Lindsey: No cross-examination.

The Court: All right, Mr. Krichiver.

The Witness: May I leave now?

The Court: Yes, sir.

(Witness excused.)

M. C. TRAVIS, called as a witness by the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ooms.

Q. Will you please state your name?
A. A. C. Travis, T-r-a-v-i-s.
Q. What is your address?
A. 2414 Coyle Avenue, Chicago.
Q. What is your occupation, Mr. Travis?
A. Tool and die maker.
Q. Where do you work?
550 A. Crowe Name Plate, Ravenswood and Grace Streets, Chicago.
Q. You were at one time an employee of Automotive Maintenance Machinery Company, were you not?
A. Superintendent.
Q. How long?
A. Two or two and a half years. I don't recall just how long
Q. When was that?
A. Well, I think it covered a period around 1935, up until 1937, something about those years.
Q. And did you know Mr. Wacker, the president of that company.
A. I do.
Q. And you know Mr. George B. Thomasma who was the working for that company?
A. He worked there for me, yes.
Q. What was his position?
A. Well, doing general machine work and any development work we might have done, he would assist and help on that.
Q. Do you recall in November, 1940 arranging for a meeting between Mr. Thomasma and Mr. Wacker?
A. I did.
Q. Would you relate to us just what occurred from
551 the time Mr. Thomasma instructed you to arrange for that meeting to the time of the meeting?
A. Well, while I had left the Automotive Maintenance Machinery Company we kind of kept in touch with one another occasionally. Otherwise, him and his wife would

come down to our home, and this particular night he came down, or the evening, he told me that, he asked me to take a little walk with him, and I walked around the Indian Boundary Park, near their home, and he told me about this.

Q. When was that?

A. That would be a short time before the meeting. I wouldn't know.

Q. Within ten days before the meeting?

A. I imagine along about that.

Q. What did he tell you?

A. Merely he wanted to try to undo a wrong. That is about the substance of it.

Q. Tell us as nearly as you can the substance of what he told you the wrong was.

A. Well, that, as near as I can recollect, he had taken this idea out of the AMMCO and started up this business in Des Plaines, or created it.

Q. When you say "this idea" you are talking about an idea about a torque wrench?

552 A. That is correct.

Q. Did he tell you about that torque wrench and who was making it?

A. He did, and many times he came to the house before that, I never knew nothing about it until this particular night.

Q. And what did he say?

A. And he asked me if I wouldn't make an appointment with Mr. Wacker.

Q. Well, he had told you that he had brought the idea of the torque wrench to the Precision people, is that right?

A. That is correct.

Q. Did he tell you anything about there being a patent application pending on it?

A. Well, that I wouldn't know.

Q. And what were you to convey to Mr. Wacker?

A. An appointment.

Q. Well, what did you do after Mr. Thomasma talked to you that evening?

A. I got in touch with Mr. Wacker.

Q. Do you recall when that was?

A. No, sir, I don't.

Q. And Mr. Wacker came in to Chicago and saw you one evening on Friday, did he not?

553 A. Well, I think after I called Mr. Wacker on the 'phone that he made this appointment for me to meet him. I think that is the way it was.

Q. You met him on a Friday evening, November 1st?

A. If it was—we will say Friday evening. I don't know what evening it was.

Q. And he picked you up in his car?

A. I believe I met him at the Edgewater Beach Hotel.

Q. And then you were driven to a nearby tavern or restaurant where you could sit down and talk?

A. A lunch room and a bar there in connection with it, yes.

Q. What did you tell Mr. Wacker there that evening?

A. I told him what Mr. Thomasma told me.

Q. Tell us as nearly as you can the substance of what you told Mr. Wacker?

A. Well, George seemed to be a little worried that night about something, and he told me he would like to see Mr. Wacker, and he explained that this idea of this wrench, that they had started this firm up here, and it seems as though these people he was connected up with—I heard you mention the gentleman's name, but I don't recall who you might have been talking about—that there was a
554 little trouble between them—I think there were two others besides Mr. Thomasma—they were pushing him out or pushing him around or something, and I simply told Mr. Thomasma, "You know Mr. Wacker for years. You worked for him long before I became superintendent."

I said, "I think you always found him a straight shooter and I think that if you have anything under cover you should go back and tell Mr. Wacker," and he did, or the appointment was set up for him to talk to Mr. Wacker.

Q. How much of this that Mr. Thomasma had told you on the previous week did you tell Mr. Wacker?

A. He never mentioned that to me before that particular night.

Q. No, but of that which Mr. Thomasma told you that night how much did you relate to Mr. Wacker?

A. Not a great deal, because at that time I wasn't connected with the AMMCO. I had charge of the Allied Trade Schools here at that time on West Lake Street, and I just merely was a go-between to set up an appointment. I knew Mr. Wacker well and I had the same respect for Mr. Thomasma. If there was anything to settle out, I made the appointment, but I thought it was my place to do that.

Q. Did Thomasma tell you why he wanted you to make the appointment rather than to make it directly with
555 Mr. Wacker?

A. He did not.

Q. And you saw Mr. Wacker?

A. I think he maybe came to me for a little advice, and that was my advice to Mr. Thomasma.

Q. Your advice was that he should make a clean breast of it?

A. That is right.

Q. And you told Mr. Wacker then on Friday night what Thomasma had told you the previous week?

A. That is right.

Q. And a meeting was arranged for the following Sunday evening, wasn't it?

A. The meeting was arranged for a Sunday afternoon and, as far as the parties at the meeting were concerned—this was at Mr. Fidler's home—Mr. Wacker, myself, Mr. Thomasma, and when I went out there I found out the meeting was postponed because Mr. Thomasma had his lawyer, he wanted him there, and he had some arrangement, and he couldn't be there at that time, so that meeting was set back for later in the evening.

Q. And you returned later in the evening and attended the meeting?

A. Yes, I was back there, that is right.

556 Q. When you arrived there who was there?

A. Well, I believe they all were there.

Q. That is, Mr. Wacker, Mr. Fidler, Mr. Thomasma and his attorney, Mr. Krichiver?

A. I think that is right. Well, I wouldn't like to go on record that they were all there at that either. I don't just recall, but there was some portion of us there. I just wouldn't go on record on that. I forget whether George and his attorney were there at that moment or not.

Q. But they were there during the evening some time?

A. Yes, that is right.

Q. Do you recall when you arrived there?

A. Well, I think it was very close to around eight o'clock in the evening. Of course, I knew what time that second appointment was set up for. I think it was around eight o'clock in the evening.

Q. Do you recall when you left?

A. I left shortly after, very shortly after Mr. Thomasma left, and his attorney.

Q. But you did remain after they had gone?

A. Maybe a couple of minutes.

Q. Now what conversation was there while you were there and Mr. Wacker was there?

A. Well, I didn't take much interest in the conversation because it really didn't involve me one way or the
557 other any more than I just done my part as to pull the principals together, and I know there was a time there was a stock discussion, about stock, sale of some stock.

Q. Was there any discussion of Thomasma's—of the fact Thomasma had revealed to you the previous week that he had invented the wrench that Precision was making and had carried it over from Automotive?

A. I don't recall that being discussed.

Q. What is your recollection of what was discussed? You said the stock. Was there anything else discussed?

A. Well, I tell you, the meeting was not so interesting, because previous to that I had been connected with Mr. Wacker before in the refrigeration game, and I remember his talking about different people we knew then, and stuff like that, during this conversation. This conversation wasn't set down on one hard issue or nothing. It was kind of a pleasant hour that was spent there.

Q. Do you recall your telling Mr. Wacker that Thomasma had told you that he wanted to do the right thing and testify as to the facts but that in doing so Thomasma would destroy the value of the stock that he owned in the Precision Company?

A. I don't recall no such statement.

558 Q. Do you recall making that statement to Mr. Wacker on the previous occasion?

A. That I made that statement to Mr. Wacker?

Q. Yes.

A. No. About the only thing I told Mr. Wacker that Mr. Thomasma told me, he wanted to undo a wrong which was, as near as I could assume, taking an idea out of one firm and planting it in another, or something similar to that.

Q. Do you recall any discussion with Mr. Wacker about prosecuting Mr. Thomasma?

A. No, sir.

Q. Do you recall Mr. Wacker telling you either on that Sunday evening or the previous Friday that they, Automotive, had no desire to proceed against Thomasma in any way unless forced to do so should Thomasma get on the stand and perjure himself?

A. Well, I can't recall—

Q. You don't recall that discussion?

A. —that kind of a conversation, no, I don't.

Q. Do you recall discussing with Mr. Wacker the possible purchase by Automotive of Thomasma's stock either on that Friday or that Sunday evening?

A. I might have mentioned to Mr. Wacker in our conversation that evening something of the purchase of
559 stock. I can't even recall, I wouldn't be sure, because I don't know whether Mr. Thomasma told me that is what he wanted to see Mr. Wacker for or not. I am not so sure about that.

Q. Well now, do you recall that at that meeting on Sunday night you started out by saying that you wanted to see Thomasma and Wacker get together because you felt friendly toward both of them?

A. That is right.

Q. And that was followed by some discussion by the other people?

A. What other people are you referring to?

Q. Mr. Travis, Mr. Thomasma, Mr. Wacker and Mr. Fidler.

A. Well, at the time I made that appointment, as far as that goes, I didn't know when I was making the appointment for Mr. Thomasma and Mr. Wacker, I didn't know whether the appointment would be made. I didn't know Mr. Krichiver and I didn't know the appointment would be even at Mr. Fidler's home.

Q. When you arrived there you knew the purpose of the meeting?

A. I knew the time it was set up, because I took Mr. Thomasma and told him what time Sunday the meeting would be set for out, through his attorney, which I didn't know the man at that time, he delayed the appointment on account of some wedding or something, that I knew
560 he must have been at some function, because the man was in a dinner suit, as far as that goes?

Q. What developed at the meeting? Was it in connection with the wrong Mr. Thomasma had done Automotive by taking the idea of the wrench over to Precision, or was it all in connection with the stock of Precision?

A. I might tell you a little bit about it, as far as that is concerned. I heard mention of a stock sale. Mr. Fidler had quite a big home there, and I might tell you half the time I wasn't even in that room, that is how much interested I was in that conversation out there.

Q. You don't recall today the substance of that conversation?

A. I do not.

Q. Do you recall any review of the facts that Mr. Wacker and Mr. Fidler made, telling you that they knew all about the wrench, and reviewed the facts for you, and that you and Thomasma and Krichiver sat there and agreed to that?

A. That I sat there and agreed to it?

Q. Yes.

A. No, I didn't agree to it because I had nothing to agree to. I wasn't interested in the outcome of the situation. I was trying to get a couple of people that had been connected together, and I worked for Mr. Wacker. I
561 was superintendent in the factory, and Mr. Thomasma worked for me.

Q. You left that meeting that night and went back to your home, did you not?

A. Most likely. That is probably what I done.

Q. And Mr. Thomasma was still there?

A. Yes, because Mr. Thomasma, if I recall, left his wife at my home while he went to get his attorney and go out there, and that afternoon I wasn't home because I do handle a little real estate. I am still a real estate broker, I might tell you, and I was out in Edgebrook on some real estate transactions that afternoon, when I found out the meeting was not going to take place until eight o'clock.

Q. When you got back to your home Thomasma was still there?

A. I believe they were, if I recall correctly. I believe they were.

Q. Did you have any conversation with him after the meeting?

A. I don't think so, to speak of. I don't think there was much of a conversation.

Q. Do you recall that night you telephoned Mr. Wacker at his home in Lake Forest between one and two o'clock in the morning?

562 A. Well, I might have called him.

Q. What about?

A. Well, I wouldn't call him just about the weather. I must have called him about something we talked about, or something. I don't know. I can't recall.

Q. Do you recall making that telephone call?

A. Well, I won't say yes or I won't say no, because I

don't really remember what took place or what happened in the telephone conversation, if there was one.

Q. Don't you recall you called Mr. Wacker and told him that you had had another talk with Mr. Thomasma who had waited for you at your home? Do you recall that?

A. That is possible. I might have called Mr. Wacker, as I said.

Q. And did you tell him that Thomasma had assured you that if he was called upon he would get on the witness stand and testify accurately and honestly as to the facts in this case?

A. Well, if I told Mr. Wacker that, that would be correct, because I have all the confidence in Mr. Thomasma, that he would do that if he told me that.

Q. Did you see either Mr. Fidler or Mr. Wacker after that evening?

A. Directly after that?

Q. Any time after that?

563 A. I think I saw Mr. Wacker once since that time.

Q. Very shortly after that or not?

A. Oh, I will say that it was three months ago. Two or three months ago.

Q. Did Mr. Wacker authorize you to make any promises to Mr. Thomasma with respect to anything in case he should testify?

A. No.

Q. Did you promise Mr. Thomasma that if he went ahead and did some experimental work he would be paid for it by Automotive?

A. I don't recall that.

Mr. Ooms: That is all for Mr. Travis.

Mr. Fidler: No cross examination, your Honor.

(Witness excused.)

564 Mr. Freeman: John Thomasma, please.

JOHN THOMASMA, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your full name and residence?

A. My name is John Thomasma, 860 Aldine Avenue, Chicago.

Q. You are a brother of the George B. Thomasma that has been referred to here today?

A. I am.

Q. And do you know Mr. Fidler who is sitting here in front of you?

A. I have seen Mr. Fidler a number of times. I share offices in the same building as he.

Q. Were you called to Mr. Fidler's office in connection with a drawing, rather, a copy or a photostat of the drawing I now hand you marked Defendants' Exhibit 9?

A. He called me down there once.

Q. And will you tell us just what took place when you were called to Mr. Fidler's office—

565 A. Well, Mr. Fidler—

Q. (Continuing)—in connection with a photostat of the drawing I just handed you, Defendants' Exhibit 9?

A. Mr. Fidler asked me if I could recognize a certain drawing. I told him I couldn't positively identify it. He asked me then if I could identify the drawing as being one of my brother's. Then I told him I had seen a good many drawings but I couldn't identify any certain drawings as being drawn by the brother.

Q. Did you tell him it looked like a drawing made by your brother, George B. Thomasma?

A. No, not in those exact words.

Q. Well, what did you tell him in respect to the drawing?

A. I told him I was out to the brother's one Sunday and he was working on a drawing but just what it was or about I didn't know exactly.

Q. Do you recall what the drawing was you saw at your brother's on this Sunday you are now talking about?

A. That paper, brown paper is about the same as he had on the board at the time.

Q. Do you recall what the drawing was of? That is, the structure supposed to be exemplified by the drawing?

566 A. Well, it was a drawing of a wrench. I recall he had a part of a wrench there he was taking dimensions of, setting it down on paper.

Q. Did you watch George B. Thomasma make the drawing on that Sunday afternoon?

A. No.

Q. Now, when you talked to Mr. Fidler, you were working from a photostat copy, is that correct?

A. I believe that is the one he had.

Q. I am now going to hand you the original from which that photostat was made which Mr. Fidler showed you, Defendants' Exhibit 9, and I am going to ask you to look at it carefully and tell us now whether or not that was the drawing which you saw your brother make, George B. Thomasma, on the Sunday afternoon about which you have just testified?

A. Well, I can't answer that definitely for this reason. When I was out to my brother's house, he only had a drawing partly made, it wasn't completed. This here, I see, is completed.

Q. Do you recall what part was made when you were at your brother's home?

A. Yes, I would say the upper part here and I rec-
567 ognize the brown sheet of paper which is something rather unusual for anyone to be drawing on. They generally use a regular drawing paper if they are drawing a sketch or drawing a plan.

Q. And were you informed that Sunday afternoon that it was a wrench that your brother was drawing?

A. Well, he did mention something about the drawing, making a drawing of a certain wrench he was getting up, certain ideas.

Q. And you recall it was on this brown paper?

A. It was on the brown paper.

Q. About how does the size of Defendants' Exhibit 9 compare with the drawing you saw on that Sunday afternoon?

A. It seems to be about the size of the paper that was on the board.

Q. Can you read drawings?

A. I can, yes, sir.

Q. Will you now look at the upper left hand corner of that drawing? Does that help you refresh your memory as to what you saw on this Sunday afternoon your brother was making?

A. Well, the portion up here (indicating) is about like the one he was drawing on that Sunday afternoon.

Q. You indicated the upper figure across the top of the sheet on Defendants' Exhibit 9?

568 A. That portion up there (indicating).

Q. Were there any numbers or lettering or markings of any kind on that figure?

A. No, I didn't get close enough to see any markings on the drawing.

Q. Who else was there on that Sunday afternoon?

A. My wife, Mrs. Thomasma, was there.

Q. Your wife and—

A. And my brother's, George's wife was there.

Q. Your brother George's wife?

A. Yes.

Q. When you were called down to Mr. Fidler's office, did he tell you that the drawing was made on a manila sheet of wrapping paper?

A. No, he didn't.

Q. He merely showed you a part of it?

A. He merely showed me a photostat. He didn't mention at all what type of paper was used or what type of paper my brother used.

Q. He merely asked your to identify as to whether or not it was made by your brother?

A. That is correct.

569 Q. When did you have this meeting with Mr. Fidler about which you are now testifying?

A. It might have been two or three weeks ago; I couldn't tell you exactly.

Q. Was it after November 15, 1940, or prior to November 15, 1940?

A. I think it was after.

Q. It was after?

A. I believe it was.

Q. Did Mr. Fidler then have an affidavit that was executed by your brother George and did he read any parts thereof to you?

A. No, he didn't read any of it at all. He may have it but he didn't mention it, as I recall.

Q. Did you talk to your brother George about that time with respect to the drawing about which Mr. Fidler made inquiry of you?

A. No, I didn't.

Q. Did you ever talk to your brother George about the drawing?

A. No, my brother and I very seldom discussed anything of that nature between the two. He went about
570 his business and I went about my affairs. We both took care of our own occupation and so forth.

Q. Were you told as to why Mr. Fidler was checking

up as to the making of the particular drawing by your brother?

A. Well, there were casual remarks.

Q. Well, what were they? Relate them as best you can.

A. Well, as I say, there were remarks about my brother —that Automotive were looking into the facts. It appeared as though there was some infringement or something of that sort. Just how deep it went, he never revealed. He mentioned at the time, perhaps, Mr. Fidler might call me down to his office there and ask me to identify the drawing.

Q. And did Mr. Fidler tell you anything about the drawing he made inquiry of?

A. No, he didn't, just merely showed it to me and asked if I could identify either the drawing or the work on the drawing as being the brother's, and I told him I could identify the paper if I saw it, being brown paper.

Q. You did talk about the brown paper in that meeting?

A. The brown paper.

Q. Were you informed that Larson had testified that the drawing you hold in your hand, Defendants' Ex-571 hibit 9, was in fact made by a high school boy, that is, he so testified?

A. Well, that was brought out. Just how it was brought out, I couldn't tell you, or who brought it out, whether it was Mr. Fidler or whether my brother told me.

Q. Did you make any comments with respect to the drawing after it was shown to you as to whether it was made by a high school boy or whether you thought your brother made it?

A. No.

Q. You are not sure whether Mr. Fidler gave you that information with respect to the high school boy making the drawing—that is Larson's testimony—or whether it came to you from your brother?

A. It was one of the two; which one, I don't remember exactly.

Q. Were you ever at Mr. Fidler's office in company with your brother?

A. No, I wasn't.

Q. When did you last see Mr. Fidler in connection with this drawing or this case?

A. Well, I saw Mr. Fidler, he came up to my office, I believe it was a week ago last Saturday.

Q. Was Mr. Hibben with him?

572 A. He was.

Q. Did they talk about this particular drawing again?

A. The only thing they brought up in connection with the drawing was this: That the case was coming up again for hearing, discussion, and that they might call me into testify whether or not I could identify the drawing.

Q. And how long was Mr. Hibben and Mr. Fidler with you this Saturday afternoon?

Mr. Lindsey: Oh, I think that is all immaterial, if your Honor please.

The Court: How is that material?

Mr. Freeman: Oh, well—

Q. Have you ever talked to Mr. Ooms or myself about it?

A. No, I have not.

Q. You have never talked to me prior to your testifying today, is that correct?

A. That is correct.

Mr. Freeman: That is all.

Mr. Fidler: No cross examination.

(Witness excused.)

Mr. Freeman: Mr. George B. Thomasma.

573 GEORGE B. THOMASMA, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your full name, please?

A. George B. Thomasma, 1121 Potter Road, Park Ridge, Illinois.

Q. Mr. Thomasma, you were connected with Automotive Maintenance Machinery Co., the plaintiff in this case, prior to June 5, 1939, is that correct?

A. Yes, sir.

Q. And you were dismissed from that company's employ on that date, is that correct?

A. That is right.

Q. What was your job with the company up to June 5, 1939?

A. I worked in the experimental department most of the time.

Q. And you knew Mr. Zimmerman?

A. Very well.

Q. And, of course, you know Mr. Wacker?

A. Yes.

Q. And you know Mr. Travis?

A. Yes.

574 Q. Will you relate the circumstances under which you were dismissed from the Automotive's employ on June 5, 1939?

A. It was the outcome of a conference in Mr. Wacker's office.

Q. And at that time—

A. Mr. Wacker asked that I tender my resignation and I did.

Q. Why did he ask you to tender your resignation? What was the conversation at that time?

A. It was pertaining to my connection, or his belief of my connection, with the Precision Instrument Manufacturing Company.

Q. Did you at that time admit your connection with the Precision Instrument Company?

A. I did not.

Q. In fact, though, you were connected with the Precision Instrument Company?

A. I was.

The Court: Let me ask you, are you going to ask this witness questions that might incriminate him?

Mr. Freeman: No, we do not want to ask him any question that might incriminate him at all, your Honor.

The Court: You understand you don't have to answer such questions?

575 The Witness: I do. If I am in doubt, I will ask you, your Honor.

The Court: Very well.

Mr. Freeman: Q. Mr. Thomasma, keeping in mind what his Honor, Judge Igoe, just said, that you do not have to answer any questions that might in any way incriminate you, will you tell us what the wrong was you wanted to right when you talked to Mr. Travis and asked him to arrange a meeting for you with Mr. Wacker?

A. I haven't said anything about a wrong existing, have I?

Q. Well, then, tell us the purpose of your arranging for a meeting through Mr. Travis with Mr. Wacker at Mr. Fidler's home on November 3, 1940?

A. I believe my attorney covered that. We wanted to sell the stock I had in the Precision Company.

Q. Was there any conversation there with respect to the interference involving the Larson application and the two Zimmerman applications?

A. It was mentioned—You mean in the conference at Mr. Fidler's home?

Q. Yes.

A. It was disclosed there that an Interference suit 576 existed and that, inasmuch as the matter was in the hands of his attorney, there was nothing he could do but follow their advice, and that was his refusal to purchase the stock.

Q. And you knew that an interference existed between Zimmerman and Larson prior to the meeting on Sunday, November 3, 1940, did you not?

A. I had no definite proof.

Q. Did you ever talk to Mr. Larson or Mr. Carlsen with respect to the Larson application which was involved in the Interference?

A. I hadn't talked to them very much that entire year; in fact, they had very little to say to me. For that reason I had an attorney representing me.

Q. You talked to Mr. Carlsen and Mr. Larson shortly after November 11, 1940, did you not, with respect to a letter having to do with an anonymous telephone call received by Harry C. Alberts, did you not?

A. The letter was written or signed by Harry C. Alberts and addressed to Carlsen or Larson.

Q. And you talked to them at that time about it?

A. They looked me up to talk to me, yes.

Q. Well, they talked to you about it?

577 A. That is right.

Q. And you then conveyed that information to Mr. Baumann?

A. I did.

Q. Coming back to this meeting of November 3, 1940, what was said by you with respect to the Interference subject matter to either Mr. Fidler or to Mr. Wacker?

A. Nothing.

Q. Did you have your attorney tell them anything with respect to the Interference subject matter?

A. No, I did not.

Q. Do I understand that the sum and substance of that meeting on November 3, 1940 was all directed to their purchasing stock, your stock in Precision from you?

A. That was our purpose.

Q. Well, was there any other conversation having to do with the Larson-Zimmerman controversy or the controversy that existed between Automotive and Precision?

A. There may have been; I don't remember.

Q. Did Mr. Fidler tell you what the facts were as they knew them at that time with respect to the Interference?

A. I did hear Mr. Fidler say he intended to prove they were wrong in some of their dates or thought he could prove it.

578 Q. Did Mr. Wacker likewise say that they would prove that Larson's dates were wrong?

A. I don't know whether he did or not, I am not sure.

Q. But you heard Mr. Fidler so state?

A. Yes.

Q. Did you tell him what the facts were as you knew them?

A. I did not.

Q. Were you informed that evening that Larson's testimony included the making of a drawing by a high school boy sometime long priod to 1938?

A. That wasn't mentioned that evening, no.

Q. No mention was made of any drawing?

A. (No answer audible.)

Q. Did Mr. Fidler give you any information as to how he was going to prove that Larson was in error or his dates were wrong?

A. He did not.

Q. He merely made the statement?

A. (No answer audible.)

Q. Did you make any comment?

A. I did not.

Q. You knew what the facts actually were at that 579 time, did you not?

A. What facts?

Q. That is as to when Larson had made his torque wrench, the torque wrench of the Larson patent?

A. I helped make it.

Q. You knew what the facts actually were?

A. I helped make it.

Q. You were part inventor?
A. I didn't get you.
Q. You were part inventor or the inventor?
A. It was my idea.
Q. And did you tell either Mr. Fidler or Mr. Wacker that evening that the Larson wrench, the subject matter of the Larson Patent Application, was your idea?
A. I did not.
Q. Did you ever tell them that?
A. Not that evening.
Q. Did you tell them that later?
A. I told Mr. Fidler that later in substance.
Q. That was on the following Thursday evening, November 7, 1940, is that correct?
A. I believe that is the correct date.
580 Q. So we get ourselves straight, you had a meeting at Mr. Fidler's home, the first meeting, on Sunday evening, November 3, 1940?
A. That is right.
Q. Then on the following Thursday evening you had another meeting at Mr. Fidler's home?
A. That is right.
Q. Then on the following Friday night, November 8th, you had another meeting at Mr. Fidler's home?
A. Yes.
Q. And, of course, these last two meetings, that is, on November 7th and 8th, Mr. Fidler was alone, that is, Mr. Wacker was not there?
A. That is right.
Q. Although he had a stenographer there, is that correct?
A. That is right.
Q. Now, when you left the meeting on November 3, 1940, you went back to Mr. Travis' home?
A. I did.
Q. And you then talked to Mr. Travis?
A. I believe he was there when I returned. He had his car and I had mine.
581 Q. You waited until he came back? At least, both of you spent some little time that Sunday evening at Mr. Travis' home when you were both together?
A. Yes, we did.
Q. And did you have Mr. Travis make any sort of an arrangement by which you were to be reimbursed or paid

in some manner for the time you were spending or for any work you might do in connection with either testifying in this Interference, or, in the Interference case, or any development work?

A. Did I arrange that?

Q. Yes.

A. With Mr. Travis?

Q. Yes.

A. No.

Q. Do you know whether there was any arrangement made under your direction by Mr. Travis with Mr. Wacker whereby you might be reimbursed?

A. No, I don't.

Q. Did Mr. Travis inform you that he had called Mr. Wacker between one and two on Monday, morning, November 4, 1940, telling him that you would be willing to testify and you would tell the facts as they were?

582 A. If he did, I don't know of it.

Q. Do you recall your attorney telling Mr. Fidler and Mr. Wacker that if you testified and told the facts as they were, that your stock in the Precision Instrument Company would be worthless or of no value?

A. I don't remember that.

Q. What was your purpose in endeavoring to sell the stock to Mr. Wacker?

A. I didn't conceive the idea of selling it to Mr. Wacker. I instructed my attorney to sell it to anyone. It was offered to Carlsen; it was offered to Larson, and a number of others.

Q. You knew your attorney had interviewed Messrs. Wacker and Fidler at Mr. Fidler's office some three or four weeks prior to this November 3d evening of 1940?

A. I don't remember when it was but he did say he had a meeting.

Q. And you knew that at the time he had turned down your offer to sell to them the stock?

A. Yes.

Q. And you had then arranged through Mr. Travis to have a meeting with Mr. Wacker?

A. I did talk to Mr. Travis and he suggested we
583 might be able to talk to Mr. Wacker and he finally succeeded in getting an appointment for Sunday afternoon. I then called my attorney and my attorney in turn changed that for Sunday evening.

Q. And you went through Mr. Travis even though you had already been turned down by Mr. Wacker?

A. I did.

Q. And you are now telling us you went to Mr. Fidler's home for the sole purpose of selling that stock?

A. That is right.

Q. Did you tell them then anything with respect to what you knew about the interference?

A. I did not.

Q. Did they tell you—when I say "they," I have reference to either Mrs Wacker or Mr. Fidler—what they knew to be the facts in connection with the testimony given by Mr. Larson?

A. They didn't tell me anything of the sort. They did say they thought they had proof and that they would try to prove in the Interference suit that they were right.

Q. What was that?

A. That they were right.

Q. And that Larson was wrong?

584 A. That is right.

Q. Did they go so far as to tell you they would prove Larson was wrong in his proofs?

A. They didn't say they would prove it. They said they thought they could prove they were wrong.

Q. And nothing was said that evening at all about the Interference?

A. No, there was no discussion concerning that.

Q. And, yet, on November 7th, you went to Mr. Fidler's home, at which time you did disclose facts to Mr. Fidler which we now have incorporated in the affidavit, Defendants' Exhibit 21, is that correct?

(Handing document to the witness.)

The Witness: Read the question, please.

(Pending question read by the reporter as above recorded.)

The Witness: A. That is correct.

Mr. Freeman: Q. And what brought about your visit to Mr. Fidler's home on November 7th with respect to facts having to do with this Interference when on Sunday evening, as you have testified, nothing was said with respect to the Interference?

A. You mean how the arrangement was made I go to Mr. Fidler?

585 Q. Well, what brought about the disclosure of facts on Thursday evening when on Sunday evening, the

preceding Sunday, nothing was said with respect to the Interference?

A. I did receive a call asking me to call Mr. Fidler for an appointment to talk to him and I didn't know what would ensue.

Q. And from whom did you receive that call?

A. I am not positive who called me but I in turn called Mr. Fidler.

Q. That is, you were instructed by someone in response to a telephone call to call Mr. Fidler's office?

A. That is right.

Q. Do you recall whether that was Mr. Wacker or Mr. Travis or who it was?

A. No, it wasn't Mr. Wacker. It is possible it was Mr. Travis called me and suggested I call Mr. Fidler.

Q. And did you call Mr. Fidler?

A. I did.

Q. What did you then tell him?

A. He asked me if it would be convenient for me to come down to his office and talk to him or if I would prefer to come to his home and talk to him. It was nearer to his home from home and I went to his home the following evening, I believe.

586 Q. Did you ask him what he wanted to see you about when you talked to Mr. Fidler on the telephone?

A. I did not.

Q. Did he tell you what he wanted to see you about?

A. He did not.

Q. In other words, you were asked by someone to call Mr. Fidler and you did that?

A. I did.

Q. And you met Mr. Fidler at his home on November 7, 1940, although at that time you didn't know what the subject matter of the meeting was about, is that correct?

A. That is right.

Q. What brought about the disclosure of the facts we now have in this affidavit on the evening of November 7, 1940? Tell us what took place there.

A. The conference ensued and shortly after, possibly a half hour to an hour after, I had arrived, his secretary arrived and we sat down and she took down in shorthand the answers I offered in answer to questions put to me by Mr. Fidler.

Q. And before you were questioned, as we now have in

the affidavit, what was said to you by Mr. Fidler with
587 respect to the controversy between Larson and Zimmerman?

A. Very little. He was apparently interested in my story and there it is.

Q. Did he tell you—or, first, did you know that there had been investigators employed by Automotive around Des Plaines at the time you visited Mr. Fidler's home on November 7, 1940?

A. I had a hunch there was; I didn't know there was.

Q. You had actually met Mr. Baumann at that time, had you not?

A. Yes, but I didn't know then that he was an investigator.

Q. You had spent some time with him?

A. He hadn't presented his credentials as such.

Q. You say he had not?

A. He had not shown his credentials as such.

Q. Incidentally, when did he present you his credentials?

A. I believe that was after I had seen Mr. Fidler at his home.

Q. Did you, by any chance, ask Mr. Fidler to have Mr. Baumann serve as a bodyguard for you?

A. I did not.

Q. You heard Mr. Baumann's testimony this morning with respect to serving as a bodyguard for you, or,
588 Mr. Wise's testimony?

A. I believe he did state that, yes. It wasn't at my request.

Q. Did Mr. Fidler tell you that testimony had already been taken in the Interference case on behalf of Mr. Larson? That is, not Larson's testimony necessarily, but some of his witnesses, when you talked to him on November 7, 1940?

A. He may have mentioned that. I am not certain. I wouldn't say yes or no. I am not certain of that.

Q. Did he tell you Larson's dates went away back to 1934 or long prior to the dates set up by Zimmerman?

A. He may have. I am not certain.

Q. Did Mr. Fidler tell you that Larson had produced as one of his exhibits a drawing dated May 29, 1936 which he testified was made by a high school boy?

A. It is possible he did; I am not certain.

Q. Did he show you a photostat of a drawing which is a photostat of the drawing that I now hold in my hand, Defendants' Exhibit 9, that evening, November 7, 1940?

A. It seems to me he did have a photostat of that drawing.

Q. What did you tell him when he showed you that photostat?

A. I told him that it looked like the one I made.

589 Q. Did you tell him you made it?

A. I told him it looked like the one I made.

Q. Was there any doubt in your mind as to whether or not you made that drawing?

A. You mean I either made it or I didn't make it, is that what you mean?

Q. Yes.

A. I made the drawing. You have it before you there. I made the drawing.

Q. Did you tell Mr. Fidler you made the drawing?

A. I believe I answered the question, sir.

Q. Yes, but just tell me. I may ask it over again. I am not trying to. I am trying to go along as fast as I can. Just tell us, did you tell Mr. Fidler you made it?

A. I did.

Q. Did Mr. Fidler then ask you to bring in any other drawings of yours he might use for purposes of comparing the drawing, Larson's Exhibit 27 in the Interference, Defendants Exhibit 9 now?

A. I don't know whether he asked for them or not. I did give him one or two drawings.

Q. You gave him two drawings?

590 A. One or two, I am not certain.

Q. Do you recall what the drawings were or what they disclosed?

A. It seems an entirely different article.

Q. Were they drawings you made for the purpose of comparing those drawings you later gave to Mr. Fidler with Defendants' Exhibit 9, or were they drawings you made—or where they drawings you had made prior to that time?

Mr. Lindsey: I object to the question unless it includes the photostat because the witness had not seen the drawing at that time. Mr. Fidler never had the original drawing; it was a photostat.

Mr. Freeman: Q. Well, I limit my question, Mr.

Thomasma, to a photostat of this drawing, and I understand you did not have the original drawing, you were making comparison with a photostat?

A. With a photostat. That is why I said I thought it looked like the one I made. I thought I made that clear.

Q. You don't happen to have any of the drawings with you you brought to Mr. Fidler or gave to Mr. Fidler so that he might have a comparison made of the drawing your gave him with the drawing you now have here, Defendants' Exhibit 9?

591 A. I have some with me, if that is what you want to see.

Q. I am not interested in any drawings unless they are the drawings you gave or showed to Mr. Fidler?

A. at that time—

Q. Yes.

A. (Continuing)—you have in mind?

Q. Yes, either on November 7th or 8th or any time you were talking to Mr. Fidler about Defendants' Exhibit 9?

A. I don't have any such, no. I don't have that with me, no.

Mr. Freeman: Mr. Lindsey, do you have the original drawings of Snap-On Defendants' Exhibits 22 and 22-A?

(Drawings handed to counsel.)

Q. I now hand you a drawing which has been marked Defendants' Exhibit 22 and also what appears to be a part of that drawing marked Exhibit 22-A, and will ask you to state whether or not the two parts constitute a drawing which you gave to Mr. Fidler for the purpose of making a comparison between the drawing you have in your hand, Defendants' Exhibit 22, and Defendants' Exhibit 9.

(Handing Exhibits to witness.)

A. It is.

Q. That drawing is witnessed, referring to the part, 22-A, by Mr. Fidler, November 8, 1940. Do you recall whether or not that endorsement or signature by Mr. Fidler was put on at his office or at his home?

A. At his home.

Q. In your presence?

A. In my presence.

Q. And had the drawing been delivered to Mr. Fidler the preceding night, that is, Thursday evening, November 7, 1940?

A. I believe it was delivered the date it bears is when it was delivered.

Q. And did Mr. Fidler ask you then on November 7th to bring over some drawing the following evening for the purpose of comparison?

A. I don't remember that he asked for it.

Q. Now, I wish you would tell us just what took place and what you told Mr. Fidler, first, on November 7, 1940, with respect to the facts having to do with the dates of the Interference?

A. What I told him with respect to the dates?

Q. Yes.

A. I don't know what I told him unless it is in the transcription you have before you.

593 Q. Well, just what did you tell him aside from what we now have in the affidavit?

A. I don't know. I suggest you read them off. I don't remember exactly.

Q. You did tell Mr. Fidler on November 7, 1940 that you were responsible for the subject matter of the Larson Application, is that correct, that you were the inventor or whatever had been done you done?

A. I conceived the idea, if that is what you mean?

Q. You were the father of the idea?

A. It was my conception.

Q. You told that to Mr. Fidler?

A. That is correct.

Q. What was his answer when you made that statement?

A. I don't remember his answer.

Q. Did you tell Mr. Fidler when you first met Larson?

A. No, I don't remember exactly when I first met him. It dates back sometime ago. I don't remember when I first met him.

Q. When did you tell Mr. Fidler then that you had made the drawing, Defendants' Exhibit 9, and that it wasn't made by any high school boy?

594 A. Possibly November 7th when the affidavit you have before you probably states.

Q. Did Mr. Fidler ever tell you that he was going to submit the drawing, Defendants' Exhibit 22, to a handwriting expert for the purpose of making a comparison?

Mr. Lindsey: Now, if your Honor please, I object to this entire line of examination. He is cross examining this witness on an affidavit that the witness has made. This isn't direct examination. Show the witness the affidavit. Why cross examine him on that? Are you trying—

Mr. Freeman: I am not asking him any questions with respect to this affidavit. I am asking him what he told Mr. Fidler and what Mr. Fidler told him.

The Court: And his reply to that was it was all contained in that affidavit,

Mr. Lindsey: Right.

The Court: Wasn't that your answer, Mr. Witness?

The Witness: Yes, sir, your Honor.

Mr. Freeman: Your Honor, I was in hopes I might save some time. I don't like to burden this court in reading an 84-page affidavit and, yet, there are certain points we want to bring out and I still want the court to have the
595 benefit of this full picture of this affidavit.

The Court: Hasn't somebody introduced the affidavit?

Mr. Fidler: It is in evidence as a defendants' exhibit.

The Court: Whether it is a burden on me or not, I can't evade it, can I?

Mr. Freeman: We are trying save as much time as we can.

The Court: I don't see the logic of you proceeding now to ask questions on the affidavit. That is pure cross examination. I understand this is your witness and he is on direct examination.

Mr. Freeman: Q. Well, following the evenings of November 7th and 8th, 1940, when you gave the substance of the present affidavit, Defendants' Exhibit 21, you had a meeting with Larson and Carlsen about the anonymous telephone call, letter?

A. I believe Larson and Carlsen contacted me after this had been compiled.

Q. And, so that we have the record straight, the last two pages of the affidavit, that is, the subject matter therein stated, you passed on to Mr. Fidler after your meeting with Mr. Carlsen and Mr. Larson?

A. That is right.

Q. And did you give that information to Mr. Fidler
596 direct or to the investigators?

A. I gave that to Mr. Baumann.

Q. And the last two pages of the affidavit is a correct statement of what you gave to the investigator?

A. That is the substance of what I gave, yes.

Q. Who arranged for the execution of this affidavit, Defendants' Exhibit 21?

A. By "execution," you mean what?

Q. The signing of it?

A. I believe I mentioned to you that was arranged by Mr. Baumann and a companion of his, a man with him that evening by the name of Schmid.

Q. That was executed by a notary in Des Plaines?

A. That is right.

Q. Who asked you to endorse the date on each of the 84 pages of the affidavit and your initials on each of the 84 pages of the affidavit?

A. Mr. Schmid.

Q. And the editing that appears in the affidavit, so we understand what I mean by editing, the longhand notations made over the typewritten matter, when did you make those?

A. Notations?

597 Q. Yes.

A. The same evening that the document was notarized.

Q. Now, have you ever talked to Mr. Fidler subsequent to the making of this affidavit with respect to any changes that might be incorporated in the affidavit?

A. Changes of grammar or errors of transcription that might be in there, trivial changes.

Q. Did you make any such changes or suggestions for changes after November 15, 1940?

A. I don't know whether they appear there or not but they were done as recent as—I think it was down in February, I am not certain of that.

Q. 1943?

A. That is right.

Q. Will you look at the affidavit and tell us now whether or not any of the changes you talked about or discussed in February, 1943 are incorporated in that affidavit?

(Handing paper to witness.)

Mr. Freeman: I might be a good time to take a five-minute recess while this witness looks through the affidavit.

The Court: All right. There are 84 pages there. It may be we had better take a ten-minute recess.

(A short recess was had after which the following occurred:)

598 Mr. Freeman: Will you read the question, now?

(Question read by the reporter.)

The Witness: A. No, I do not see them here.

Mr. Freeman: Q. And at whose suggestion was it that you checked the affidavit as to any errors therein, in February of 1943?

A. Mr. Fidler's.

Q. Did he call you to come down to his office?

A. He did.

Q. And were you paid for that time?

A. I was not.

Q. Now, you finally did sell your stock in Precision Instrument Company, did you not?

A. I finally got rid of it, yes.

Q. Why do you say you got rid of it?

A. I do not have it any more.

Q. Well, you really sold it, then?

A. I received some money for it, yes.

Q. And you received $500.00?

A. A paltry sum, yes, $500.00.

Q. Well, that was an Automotive Maintenance check, was it not, or was it a Davis, Lindsey, Smith & Shonts check?

A. David, Lindsey, Smith & Shonts check.

599. Q. Now, after the signing of this affidavit on November 15, 1940, when did you next see Mr. Fidler?

A. At his office, shortly after that. I do not remember that date. I believe that was the date you fixed as November 28th, at a conference in Mr. Fidler's office.

Q. And that was the conference where Mr. Alberts and Mr. Johnson, Mr. Wacker and Mr. Fidler was present; is that correct?

A. And Mr. Allen was also present.

Q. Any one else there?

A. Myself.

Q. And your wife came down with you at that time?

A. My wife accompanied me to the city; however, she did not sit in on the conference.

Q. And at the conference on November 28, 1940, what took place there; just tell us as briefly as you can.

A. I was introduced and then questioned by Mr. Fidler concerning the affidavit. And I answered his questions.

Q. And were you there asked whether or not you made the drawing, Defendants' Exhibit 9?—And I am now referring to the conference of November 28, 1940, where Mr. Alberts and Mr. Johnson, representing Snap-On, were present.

A. Yes.

600 Q. And you told them then that you made Defendants' Exhibit 9?

A. I did.

Q. Had you ever told Mr. Johnson or any one connected with Snap-On that you were interested in Precision Instrument Company, prior to the signing of this affidavit on November 15, 1940?

A. Did I tell them?

Q. Yes.

A. No, I did not.

Q. Were you cautioned by any one as to whether you should make it known to either Mr. Alberts or Snap-On, that you were either interested or a stockholder in Precision?

A. I was not cautioned not to tell them, no.

Q. Didn't Mr. Larson tell you not to tell Snap-On that you were connected with Precision?

A. He didn't tell me not to tell them; he said he didn't want them to know it.

Q. Did he tell you why he didn't want them to know it?

A. His reason offered to me was that Snap-On would discontinue the purchase of the wrenches.

Q. And didn't he tell you that Snap-On wanted no connection with any one that had any connection with Automotive?

601 A. Something to that effect, yes.

Q. And that if Snap-On had found out that you were connected with Automotive, and likewise connected with Precision, Snap-On would cancel the agreement?

A. He said they would; but I don't believe they would have.

Q. I am just asking you what he told you.

A. He did, yes; that was his claim.

Q. And you never made that fact known to any one connected with Snap-On, or to its counsel; that is, your connection with both Precision and Automotive?

A. I did not.

Q. And that connection became known after your disclosure of the facts to Mr. Fidlar on November 7th and 8th, 1940?

A. I believe that is right.

Q. Some time after that?

A. I believe that is right.

Q. How long were you at the meeting with Mr. Fidler, Mr. Wacker, Allen, and Johnson and Alberts on November 28, 1940?

A. As I remember, we were to meet at 10:00 o'clock that morning; and it lasted until possibly 2:00 or 2:30 that afternoon, with no interruption.

Q. And were you examined at length by Mr. Fidler
602 as to your activities in connection with the Larson development?

A. I was questioned at length, yes.

Q. And were you then shown the drawing, Exhibit 22? —And I am holding in my hand a photostat; I mean the original, for the purpose of comparison with Defendants' Exhibit 9.

A. I believe the original of that drawing was in that office that day, yes.

Q. And Mr. Fidler questioned you as to whether or not you made the drawing, Exhibit 22, at that time in the presence of—

A. I am not certain whether he asked me whether I made it, or not.

Q. Do you recall Mr. Fidler's using that drawing, Defendants' Exhibit 22, in the presence of Mr. Alberts and Johnson, at the time you were examined by Mr. Fidler on November 28, 1940?

A. They may have; I am not certain.

Q. Now, just tell us what Mr. Fidler asked you; that is, this conference where you were examined lasted for some few hours; what Mr. Fidler asked you in the presence of Mr. Johnson and Mr. Alberts.

A. I don't remember what he asked me; it was all
603 pertaining to what is between these two covers; and I answered his questions.

Q. In other words, Mr. Fidler used as his text that morning the affidavit which you had executed on the 15th of November, 1940?

A. I don't know whether he referred to it constantly or not; he was sitting at the opposite end of the room, and he put the questions and I answered them.

Q. Well, can you tell us the general substance of that; would you say that the subject matter of your answers, and the questions put to you by Mr. Fidler on November 28th, in the presence of Mr. Johnson and Mr. Alberts, is substantially that which we now have in this affidavit?

A. That is correct.

Q. And at that time was the original drawing of Defendants' Exhibit 9 there, or did you have a photostat?

A. There was a photostatic copy on a desk, spread out on a desk.

Q. And you then said positively that you made the drawing?

A. I believe I did.

Q. And that positive statement was made in the presence of, and in the hearing of both Mr. Alberts and Mr. Johnson?

604 A. Yes.

Q. Now, when after the meeting of November 28, 1940, did you next meet Mr. Fidler?

A. I don't remember the date; it was shortly after that, when I was called in to ask whether or not I would relinquish my stock.

Q. And do you recall just when that was?

A. It was after November 28th; I do not remember the exact date.

Q. Did they tell you what they wanted the stock for?

A. No; I had received a letter on the stationery Haight, Goldstein & Hobbs, demanding that I surrender my stock that I was holding illegally.

Q. And you turned that stock over to Mr. Fidler?

A. Not that same day.

Q. Well, shortly thereafter.

A. Shortly thereafter.

Q. And you received the sum of $500.00?

A. I received a receipt for same.

Q. Did you make any inquiry as to why Mr. Fidler was buying the stock, you having been turned down on numerous occasions where you wanted to sell it to Automotive?

A. I didn't know who was getting it; I assumed Snap-On was paying for it; I didn't know who it was.

605 Q. That didn't tell you?

A. They did not.

Q. They merely asked you to dispose of the stock for $500.00, and you said yes; and you received the five hundred?

A. I received a receipt for it first, and later I received a check for $500.00 for my receipt.

Q. You gave them a receipt for $500.00 first.

A. I gave them the stock certificate, and they gave me

a receipt; and later I gave them the receipt in return for their check.

Q. And when you delivered the stock, or the transaction was completed, you didn't know who was getting the stock?

A. I did not.

Q. And they never told you?

A. At that time, no, they did not.

Q. Have they told you since?

A. As I understand now, all of the stock went back to Precision Instrument Company, so I have been told.

Q. And who told you that?

A. Different ones have told me that; others that have had stock said they got their money back.

Q. Did you ever make inquiry from Mr. Fidler?

A. I did not.

606 Q. Now, after that, when did you next meet and confer with Mr. Fidler?

A. On what account?

Q. Oh, in connection with any of the information that you had given him; or any of the—

A. I believe that closed the matter, when I received my check.

Q. Well, now, you continued to have some correspondence with Mr. Wacker with respect to other developments, did you not?

Mr. Lindsey: I object, your Honor. That has nothing to do with his subject of perjury; the witness has testified that closed the matter, so far as he was concerned. These other developments do not enter into the picture at all.

The Court: How are they material?

Mr. Freeman: Well, your Honor, they are material; and we have examined Mr. Thomasma at Mr. Fidler's office, and we have here a receipt for $200.00 paid to Mr. Thomasma; and when I asked Mr. Thomasma about that $200.00 he didn't know whether he was going to get $50.00 or $100.00. Mr. Fidler called him up and just asked him if that would be ample. And I think it is important that your Honor have the full picture as to just what took place in this case. And we are not going to take long; we

607 will be through in another twenty minutes. We should get the information before the Court.

Mr. Lindsey: If your Honor please, these later developments haven't got a thing to do with the case; and it does

not matter what we paid this witness, whether we paid him $200.00 or $10,000 for what we did. It is simply an attempt and the sole attempt, and it has been that way through these depositions,—and say this advisedly and without heat—there has been an attempt to smear opposing counsel for what happened subsequently; and there is no substance to it.

Mr. Freeman: I can answer that: In the opening statement made here by Mr. Smith it was clear they were going to show they never 100 per cent believed Mr. Thomasma about making this drawing, by which they can thus deny they had any knowledge of the perjury; and we want to show that they had confidence in Mr. Thomasma, because they continued business relations with him throughout, of a confidential kind. And when Mr. Wacker wanted certain information about what Precision was doing, even though he had a contract with Precision, he called upon his friend, Mr. Thomasma, to go out and get that information. And I think it is very important. Because in one breath they say we could not believe him, they only had suspicion; it 608 was not definite. Yet they were satisfied to use and operate with Mr. Thomasma throughout upon a business relationship of the kind that is more or less of a confidential character. And I think that is what we want to show; and it does tie up with what has gone on before; and I think it is very pertinent.

The Court: All right; go ahead and ask the question. But I think you have spent a lot of time on that, that I am unable to see the relevancy; but maybe I missed the last point here.

Mr. Freeman: Q. After the Larson patent issued did Mr. Wacker send you, or have a copy of the Larson patent sent to you?

The Witness: A. By—

Q. Mr. Fidler?

A. By copy of Larson patent, you mean what, do you have a copy there that I may see?

Q. Do you recall receiving a letter from Mr. Fidler stating that he was sending you a copy of the Larson patent, in accordance with instructions that he received from Mr. Wacker?—Do you have the original of that correspondence?

Mr. Hibben: What is the date of that letter?

Mr. Freeman: It was a letter that you sent me 609 the other day, Mr. Fidler.

Mr. Fidler: Is this the letter, Mr. Freeman?—Its text is not exactly as you have stated.

Mr. Freeman: I will read the letter; I may not have stated the text exactly: Tis is a letter April 20, 1942, addressed to George Thomasma, Park Ridge, Illinois; "Dear Mr. Thomasma: At Mr. Fidler's request, I am enclosing a copy of the recently issued Larson Patent No. 2,279,792." You received such a letter?

The Witness: A. I received it.

Mr. Freeman: Q. And you wrote to Mr. Fidler and acknowledged receipt of that letter, did you not; that is a copy of the patent?

A. Yes.

Q. Now on April 16th, 1941, you wrote to Mr. Wacker with respect to being reimbursed for some time and material that you had used in connection with some developments; that is correct, is it not?

A. Yes.

Q. And do you recall Mr. Wacker's reply to you?—You may have it; it is the letter of April 21, 1941.

A. I have it here; yes.

Mr. Freeman: I might, for convenience, read Mr. Thomasma's letter of April 16, 1941, which has here-
610 tofore been referred to as Defendants' Exhibit No. 29, —aside from the heading:

"Dear Mr. Wacker: I am in receipt of your letter dated April 1. I am pleased to note your comment on drawings and models sent through Mr. Fidler. I am sorry my power drive can not be patented, Mr. Fidler assures me I will be reimbursed for time and material.

"The range of my surfacing hone is 2½" to 4½".

"I believe springs can be shaped to reduce corner wear on stones to a minimum.

"Experiments with impregnated felt and abrasive stones combined will prove satisfactory.

"In a recent telephone conversation with Mr. Fidler I mentioned your letter. Mr. Fidler promised to arrange a conference as soon as his plans will permit.

"I have several ideas I will submit for discussion.

"Thanking you, I am, Yours truly, George B. Thomasma."

Mr. Lindsey: I move it be stricken. If is not material.

Mr. Freeman: It follows along the lines—

611 The Court: Let it go in; we will perhaps save time. Go ahead.

(Said letter so offered and recevied in evidence, was marked DEFENDANTS' EXHIBIT NO. 29.)

Mr. Freeman: Q. And you received a letted dated April 21, from Mr. Wacker; is that correct?

The Witness: A. That is right.

Mr. Freeman: I now read that letter, as Defendants' Exhibit 30.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 30.)

Mr. Freeman: The letter is addressed to George B. Thomasma, Park Ridge, Illinois.

"Dear George: Replying to your letter of April 16 will state that we are only interested in the development of tools or products that we can add to our line and we have never had in mind that you would go ahead with experiments that we had not authorized and then have you expect to be reimbursed for the cost of these experiments—"

And I am going to skip the rest of the letter and I am going to read the last part of the letter.

612 The Witness: I suggest you include the second paragraph, Mr. Freeman, please.

Mr. Freeman: I will read the whole letter, then.

The Witness: Please.

Mr. Freeman: After reading the first paragraph,—

"As previously stated, however, we are definitely interested in making an arrangement with you on any new developments that will be of commercial value to us.

"In this connection we are very much interested in the development of your surfacing hone. In your letter of April 16 you state that the range of your surfacing hone is 2½" to 4¼".

"I turned the body and drawings of this tool over to one of our engineers and asked him for his suggestion of a suitable spring to give your surfacing hone the same range as our own. Our range as you will recall is from 2-11/16" to 4¼".

"After making a number of layouts our engineer reported that in his opinion it would require four sets of springs that would have to be put on and taken off for different diameters to cover the full range above mentioned.

"Accordingly, we will appreciate receiving from you 613 a sketch of a suitable spring to cover the range mentioned in your letter as we, frankly, don't know how to work it out.

"You have no doubt studied this situation and have some definite ideas in mind; and we will be glad to complete and test the tool if you will give us a sketch of the spring that will layout satisfactorily on paper to cover the full range without taking all the wear on the corners at the low and high points of expansion.

"Incidentally, I am wondering what Precision is doing by way of manufacturing wrenches and whether or not they have developed a new model of wrench.

"With kindest regards, Very truly yours, Automotive Maintenance Machinery Co., by Fred G. Wacker, President." —

Q. You were on friendly terms with Mr. Wacker after you sold your stock in Precision Instrument Company, were you not?

The Witness: A. I was.

Q. And all of his letters addressed you as Dear George, do they not?

A. That do.

Q. And you even received a letter from Mr. Wacker 614 while he was down at Hot Springs, Arkansas?

A. I did.

Q. In reply to a letter you had written to his office?

A. I have it here.

Q. You received a letter from Mr. Wacker while he was at Hot Springs?

A. That is right; I have it here.

Q. You were asked by Mr. Wacker to check into what Precision was doing as late as June 25, 1941, were you not?

A. Yes; I have that here.

Mr. Freeman: And I will read a letter dated June 25, 1941, which is Defendants' Exhibit No. 17.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 17.)

Mr. Freeman: A letter addressed to George B. Thomasma, Park Ridge, Illinois.

"Dear George: We are wondering if Precision is living up to its agreement to discontinue manufacture of Torqometers after the specified quantity per our settlement agreement with them had been produced. In other words, how

many wrenches of this type have they made since the 615 settlement and how many more do they intend to make?

"Do you know of any way by which we could secure accurate information in this respect?

"With kindest regards; Very truly yours, Automotive Maintenance Machinery Co., by Fred G. Wacker, President." —

Q. Did you answer that letter?

The Witness: A. I am not certain whether I did or not.

Q. Do you recall writing Mr. Wacker on July 1, 1941?

A. I may have; I do not have a copy of it.

Q. Well, I show you a copy, or a photostat of a letter dated July 1, 1941, and will ask you if that is a letter that you sent to Mr. Wacker, and if it is in your handwriting?

A. Yes, that is my handwriting.

Mr. Freeman: And I now read Defendants' Exhibit No. 18.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 18.)

Mr. Freeman: A letter from Thomasma to Fred Wacker:

"Dear Mr. Wacker: I reply to yours of June 25, regarding P. I. M. Co. I have secured some information and expect more about July 5. Will you let me know 616 when I may see you as I believe I can tell you more in person than I could by letter. I prefer evening or week end when and where you may select. Very truly yours, George B. Thomasma. P. S. I am pleased to do all I can in this matter for you." —

Q. Now, do you recall writing such a letter?

The Witness: A. I do.

Q. That P. I. M. Co., that is the Precision Instrument Manufacturing Company?

A. That is right.

Q. And that letter that you wrote on July 1 was definitely in reply to Defendants' Exhibit No. 17, the letter written you by Mr. Wacker, where he wanted you to dig up some information?

A. Yes.

Q. And did you get the information that Mr. Wacker wanted?

A. I knew they were still making wrenches.

Q. And what did you have to tell Mr. Wacker, which you could tell him better in person than you could in writing?

A. That there was activity at the plant, that they were still building wrenches, material going in the plant to build wrenches.

617 Q. And was there a meeting arranged between you and Mr. Wacker, where you conveyed the information to him that you did not want to put in your letter of July 1, 1941?

A. I believe I talked to Mr. Wacker by telephone; he was downtown for the day; and asked if I could see him downtown; which I did. I met him at the Sherman, and we lunched together, spent possibly an hour or two together.

Q. And did you then give him information that he had requested you to dig up on June 25, 1941?

A. I did.

Q. Would you mind telling where you obtained the information as to what Precision was then doing?

A. I cannot give you that information. Your Honor, that is of a confidential source; and I cannot tell you where I got it.

Mr. Lindsey: It has no materiality, your Honor please.

Mr. Freeman: Q. Do you recall writing to Mr. Fidler on June 24, 1941?—And I now hand you a photostat of a letter marked Defendants' Exhibit 46; you have the original thereof; or at least, there is an original here avail-

618 able.

The Witness: A. That is my letter.

Q. And will you look at the last paragraph of that letter, which I would like to have you read and tell us what arrangements were made through Mr. Travis with respect to payment?—On the second thought, I will read the letter, so that the Court might have the full information; letter dated June 24, 1941, from George B. Thomasma to R. F. Fidler.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 46, and read by counsel.)

Mr. Freeman: Q. And I now ask you what arrangements were made for you with Mr. Wacker by Mr. Travis in connection with being repaid?

The Witness: A. That anything that I might make, I would be paid for if I submitted it to him.

Q. And the letter that I just read is June 19, 1941; and there was a deal or a promise made through Mr. Travis

by Mr. Wacker last year; so that was in 1940, is that correct?

A. It sounds correct.

Q. Well, can you tell us now when that promise was made through Mr. Travis?

A. I don't remember when he made that promise, 619 but he did say that anything I would make and submit to them, he would pay for it.

Q. That is, Mr. Wacker told you that, or he told you that through Mr. Travis?

A. You are talking for Mr. Travis now?

Q. Yes.

A. That is it.

Q. Isn't it a fact that that promise was made to Mr. Travis, prior to the time you went to Mr. Fidler's home on November 7th and 8th and gave him the information we now have in the affidavit of November 15th, 1940?

Mr. Fidler: Object to the cross-examination of this witness.

Mr. Freeman: Q. Tell us when the promise was made.

The Witness: A. I don't remember exactly.

Q. That is your best recollection?

A. That is right.

Q. You do recall now, though, that the promise was made by Mr. Wacker through Mr. Travis?

A. I don't remember the promise was made to Mr. Travis by Mr. Wacker, but Mr. Travis and I talked about what I would do with some of the other things I had.

Q. And do you have the letter of June 30th to Mr. Fidler, Defendants' Exhibit 49?

620 A. From me to Mr. Fidler?

Q. From you to Mr. Fidler.

A. No, I do not.

Q. I hand you a photostatic copy, for your convenience.

A. Yes, that is mine.

(Said letter so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 49.)

Mr. Freeman: And I now read Defendants' Exhibit 49, a letter from Thomasma to R. E. Fidler:

"Dear Mr. Fidler: I have your letter of 6-27 with my drawings.

Mr. Wacker wrote two letters on June 25th. One, I am pleased expresses his sentiments regarding my model hone also my efforts in this direction.

"The other a request for information. I will gladly do all I can to secure all information and forward same to him at once.

"I know of no person I would rather submit my developments to and if they appeal to him I assure you again Mr. Wacker has first choice.

"Thanks again.

"Very truly yours, George B. Thomasma."

Q. And will you now turn to your letter to Mr.
621 Fidler, of December 1, 1941, reading as follows:

"Dear Mr. Fidler: Please sign dial and page out of magazine enclosed as per our telephone conversation of even date. Yours very truly, George B. Thomasma."

Do you find such a letter?

A. I have a photostatic copy of it here.

Q. And that is a letter written by you to Mr. Fidler?

A. That is right.

Q. And do you recall whose dial it was that was enclosed in that letter?

A. Do you have the dial?

Q. No, I am just asking if you recall.

A. I do not remember.

Mr. Freeman: Do you have the dial, Mr. Fidler?

Mr. Fidler: I am not certain whether I have it or not.

Mr. Freeman: Q. Do you recall whether or not it was a Precision Instrument Company dial of the Torqometer wrenches made by Precision Instrument Company?

The Witness: A. Bearing their name?

Q. Well, one of the dials that they used on their present tools.

A. I don't remember; I don't know. I don't know what you have reference to.

622 Q. Well, I am just trying to find out whether or not that was a Precision Instrument dial or not.

A. I don't know, if you do not have it there; I am not certain.

Mr. Freeman: Can you tell us, Mr. Fidler, if it was a Precision Instrument dial?

Mr. Lidnsey: Oh, go ahead; it has no materiality.

The Court: Yes, the objection is sustained. Let us have another question.

Mr. Freeman: Q. In 1942; in June of that year you received $200.00 from Mr. Fidler, did you not?

The Witness: A. I did.

Q. And do you recall what that was for?

A. That compensated in part for money that I spent in making several models that I made and submitted to Mr. Wacker.

Q. And I am correct in my understanding that when that money was paid you, you didn't know shortly prior thereto whether you were going to get $50.00 or $100.00, or what you were going to get; is that correct?

A. That is right.

Q. And I am correct in that Mr. Fidler called you and asked you whether $200.00 would be ample?

A. If that would cover it, or suffice.

623 Q. And you had never asked him for any specific amount prior to that time

A. I have never asked for any specific amount.

Q. And at that time you signed a receipt, of which I now hand you a photostat, Snap-On's Exhibit 27; is that correct?

Mr. Lindsey: Object; no materiality whatsoever, if your Honor please.

The Court: Let it go in; we will perhaps save time.

(Said document, so offered and received in evidence was marked Snap-On Exhibit No. 27.)

The Witness: A. Yes, sir.

Mr. Freeman: Q. And that $200.00 was delivered to your home in Park Ridge on Saturday evening by Mr. Fidler?

A. That is right.

Q. And had you made inquiry from Mr. Wacker about getting a shaper or a tool on a lend-lease basis at one time?

A. I did try to purchase, borrow or lease a shaper from Mr. Wacker; yes.

Q. You were turned down?

A. He wrote me a letter stating that he could not sell me one; he could not give or lease me one at that time.

624 All the machines that they were delivering were scheduled for orders far in advance; and unless I could dig up a priority number to cover one, he could not sell me one at that time.

Q. And later on did you have delivered to your home one of these tools, without a priority?

A. Not a new one.

Q. A second hand one?

A. A used model, that had been used for demonstration

purposes, and experimental purposes; and I was asked if that would serve my purpose until such time—

Q. Who asked you whether that would suit your purpose?

A. Mr. Fidler.

Q. That is, it was through Mr. Fidler that Automotive sent you a shaper, a second hand one?

A. A used shaper; yes.

Q. And that was after you were turned down by Mr. Wacker?

A. On the purchase of a new one, yes.

Q. And that was given to you at or about the time that you executed the receipt, Defendants' Exhibit No. 27; is that correct?

A. It was delivered to my home prior to that; yes.

Q. A couple of weeks prior to that time?

625 A. A few days, possibly.

Mr. Freeman: That is all. I might say, we will want to offer these letters, if we have not already offered them. I notice I have taken too much time already. Might we do that in the morning, your Honor?

Mr. Lindsey: No cross-examination.

(Witness excused.)

626 Mr. Ooms: I would like at this time, if your Honor please, to offer into evidence the exhibits referred to by the witness Thomasma during his testimony yesterday.

As Defendants' Exhibit 21, Mr. Thomasma's affidavit.

As Defendants' Exhibit 26, the series of invoices of John A. Wise and Son which were referred to by the witness Wise.

As Defendants' Exhibits 22 and 22-A, the drawing which was identified by the witness Thomasma.

As Defendants' Exhibit 29, a letter of April 16, 1943 from the witness Thomasma to Mr. Wacker.

As Defendants' Exhibit 30, a letter from Mr. Wacker to Mr. Thomasma of April 21, 1941.

As Defendants' Exhibit 17, a letter of June 25, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit 18, a letter of July 1, 1941, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit 46, a letter of June 24, 1941, from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit 49, a letter of June 30th from Mr. Thomasma to Mr. Fidler. I don't have the year there. That is June 30, 1941.

As Defendants' Exhibit 50, a letter of December 1,
627 1941 from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit 27, a receipt signed by George B. Thomasma for a shaping machine and $200.

The Court: If there is no objection, they may be received.

Mr. Lindsey: No objection.

Mr. Fidler: No objection.

(Said documents, so offered and received in evidence, were marked, respectively, DEFENDANTS' EXHIBITS NOS. 21, 26, 22, 22-A, 29, 30, 17, 18, 46, 49, 50 and 27.

Mr. Ooms: Mr. Walter Carlsen, please.

WALTER CARLSEN, called as a witness on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ooms.

Q. Will you please state your name?

A. Walter Carlsen.

Q. Where do you live, Mr. Carlsen?

A. 309 Washington Street, Park Ridge.

The Court: Speak louder, please.

628 The Witness: 309 Washington Street, Park Ridge.

Mr. Ooms: Q. What is your occupation?

A. I am in the manufacturing business.

Mr. Ooms: I might suggest, your Honor, the witness has a little bronchial trouble and if he isn't always heard, we won't mind repeating.

Q. Is the name Walter Carlsen your legal name?

A. No, it isn't.

Q. What is your legal name?

A. Palis.

Q. Is your legal name—

The Court: What do you mean by "legal name"?

Mr. Ooms: The name under which he was naturalized, born and christened. I am about to explain.

The Court: Oh.

Mr. Ooms: Q. Your legal name is Walter Palis?

A. Yes.

Q. You were naturalized in the United States District Court under that name?

A. Yes, sir.

Q. How is it you use the name of Walter Carlsen?

A. My wife started in the beauty shop at Arlington
629 Heights and it was the Carlsen Beauty Shop and everyone called us Carlsen and it has been Carlsen ever since.

Q. When did you take over that beauty shop?

A. 1932.

Q. What name do you use in your business other than the beauty shop?

A. Mostly Carlsen.

Q. Do you own any real estate?

A. Yes.

Q. What name is that under?

A. Palis.

Q. Are you registered for voting in Illinois?

A. No.

Q. What company are you connected with, Mr. Carlsen?

A. The Precision Instrument Manufacturing Company.

Q. What is your office there?

A. Secretary-treasurer.

Q. How long have you been secretary-treasurer of that company?

A. Since December, 1938.

Q. Do you recall the Interference of Larson vs. Zimmerman, which we have referred to here?

630 A. I do.

Q. Did you testify in that Interference?

A. I did.

Q. Was your testimony ever transcribed that you gave in that Interference?

A. Not that I know of.

Q. Well, in that case did you testify about when Mr. Larson had some torque wrenches?

A. I did.

Q. Do you recall any of the years you fixed when he first had torque wrenches?

The Court: Let me ask, are you going to ask this man questions that might incriminate him?

Mr. Ooms: I don't intend to, your Honor.

The Court: You understand you don't have to answer any questions that might incriminate you, don't you?

The Witness: Yes, sir.

Mr. Ooms: He is an officer of one of these companies.

The Court: I don't care what he is. He is not going to come upon the stand and testify against himself.

Mr. Ooms: Q. Are you the Walter Carlsen who was named as a defendant in this case originally?

631 A. Yes, sir.

Q. You have subsequently been dismissed as a defendant?

A. Yes, sir.

Q. Mr. Carlsen, I want to direct your attention to a time in November, 1940 when all of the testimony in the Interference had been taken. Do you recall that period of time?

A. Yes, I do.

Q. Do you recall at that time a letter received by Precision Instrument Company from Harry Alberts?

A. Yes, I believe I do. We had several letters from him around about that time.

Q. Do you recall a letter of about that time received on November 11, 1940 (handing paper to witness.)?

A. Yes.

Mr. Ooms: I have handed the witness Defendants' Exhibit 62, a letter from Harry C. Alberts to Precision Instrument Manufacturing Company, Des Plaines, Illinois, which has been read in the record here and is the letter which states that Mr. Alberts had received an anonymous tel-

632 ephone call about the testimony in the Interference.

Q. When did you first see that letter, Defendants' Exhibit 62?

A. I think it was around the middle of November, probably just before the middle of November. I open all the mail at Precision and, of course, it would come to my attention first.

Q. Do you recall what was done with this letter?

A. I left it on the desk and Mr. Larson took care of it. I think he called Mr. Alberts about it.

Q. Do you recall exhibiting that letter to anybody but Mr. Larson?

A. Yes, I do.

Q. To whom?

A. To George B. Thomasma.

Q. When was that?

A. That was the next day, I believe, after the letter was received.

Q. Will you tell us the circumstances of that?

A. Well, we went to see George B. Thomasma about this letter and we confronted him with it and asked him at the time whether he knew this Mr. Krichiver from whom we presumed that the letter was—that the telephone call was by, and he told us at that time that he couldn't do
633 any more about it because it was too late.

Q. Did he explain why it was too late?

A. No, he didn't. He just insisted it was too late, he couldn't do any more about it.

Q. Do you recall having had a pretrial deposition taken in this case?

A. Yes, sir.

Q. Do you recall being examined about this letter?

A. Yes, sir.

Q. What did you testify at that time?

A. At that time I said we hadn't showed it to George B. Thomasma and later on when I got back and talked it over with Mr. Larson, why, I recalled we had shown it to him.

Q. Is that your explanation for the difference between your testimony now and then?

A. Yes, sir.

Q. What next occurred with respect to this Interferference after you talked to Mr. Thomasma on or about November 12, 1940?

A. I think we got a telephone call from Mr. Alberts, asking us to come down to his office.

Q. Do you recall about when that was?

634 A. It was along in the middle of November.

Q. Did you go to his office?

A. Yes, we did.

Q. Who went there?

A. Mr. Larson and myself.

Q. Whom did you see there?

A. Mr. Alberts and Mr. Johnson.

Q. That is Mr. Joseph Johnson of Snap-On Tools Corporation?

A. Yes, sir.

Q. Tell us in your own words, Mr. Carlsen, what occurred there at that meeting.

A. Well, Mr. Alberts asked Mr. Larson if the testimony he had given in the case was true and he didn't say much of anything and then he confronted him with a drawing and told him—

Q. Who confronted who?

A. Mr. Alberts confronted Mr. Larson with a drawing and told him about a drawing that was offered as an exhibit in the testimony that was given and Mr. Alberts said he wanted to know whether it was true, whether it was true he had made it or Mr. Thomasma had made it.

And after, oh, some other words and a little discussion, why, Mr. Larson finally admitted that Mr. Thomasma
635 did make the drawing.

Q. What else was said at that meeting?

A. Well, he told us at the meeting there that if the things we had said in the testimony wasn't true, we had better get ourselves a lawyer, he didn't want any more to do with it.

And Mr. Larson asked him then if he wouldn't suggest some lawyer for us and Mr. Alberts gave us a list of three gentlemen he knew and we took the one at the top of the list who was the closest to us and went to see him that afternoon.

Q. Whom did you go to see?

A. Mr. Hobbs.

Q. What occurred there?

A. Well, we went over and told Mr. Hobbs just exactly what had transpired.

Q. Tell us, if you can, the conversation that occurred there.

A. Well, we told him that we had given testimony in the deposition that wasn't exactly true and we felt like we were in a very bad spot and told him the story as well as we could and, after considerable discussion, why, he said he would follow up Mr. Fidler or go see Mr. Fidler and see what he could do.

636 Q. What occurred after that. Just tell us everything you can as to what occurred in that period.

A. Well, from there on we went on home and I think we got a letter the next day or the following day to come down and see him or else a telephone call, I just don't recall which it was, and we went down the next day to see him and he had some sort of an agreement there that just wasn't the type of agreement anyone would sign.

Q. Just when was this?

A. This was on the second time we had gone to see him, about a week or less than a week, I believe if was, or just about a week, I imagine it was, after the first call we made on Mr. Hobbs.

Q. Did you see any of the correspondence that passed between your company and Mr. Hobbs?

A. I opened it but I didn't pay much attention to it.

Q. Did you read the letters?

A. Yes.

Q. I show you a letter which is in evidence here as Defendants' Exhibit 63, and a companion draft of a letter, Defendants' Exhibit 64, and ask you whether you have seen those before?

(Handing papers to witness.)

637 A. Yes, I have.

Q. When did you see them?

A. Well, the first week in December.

Mr. Ooms: I might say to your Honor that these are the letters in which Mr. Hobbs represents he had seen Mr. Fidler and he enclosed a draft of a proposed letter to Mr. Fidler proposing a settlement.

If there is no objection, I would like to keep your Honor refreshed as we go along on the things we have read so the story is more intelligible.

Q. What did you do after you received these letters, Defendants' Exhibit 63 and Defendants' Exhibit 64?

A. I believe we went to Mr. Hobbs' office and discussed an agreement with him there and told him, I think it was at that time that we had told him, that there must be some sort of a better settlement we could make than the last agreement.

Q. Are you referring to some agreement he had or these letters or what are you referring to?

A. Why, there was some agreement he had there ready for us. He had an agreement all made out for us there between AMMCO and Mr. Larson and Precision.

638 Q. Go ahead and tell what occurred. Do you know what was in that agreement?

A. I know the sum and substance of it. I don't know exactly what was in it. I know the agreement wasn't anything we could sign and still stay in business.

Q. What was the sum and substance of it?

A. It was something they just wanted the patent Mr. Larson had and wanted us to stop manufacturing wrenches and that would just about put us out of business. I didn't read it over very carefully.

Q. Do you recall when you discussed that with Mr. Hobbs?

A. I don't know the exact date but it was shortly after these letters were received because not so long after that or, perhaps, it was about the same time, Mr. Hobbs refused to act as our attorney any longer.

Q. How many times did you see Mr. Hobbs in this period when he was acting as your attorney?

A. About three times.

Q. Did you always accompany Mr. Larson there?

A. No.

Q. Did he sometimes go alone or did you sometimes go alone?

A. No, Mr. Larson sometimes went alone; I never
639 went there alone.

Q. Do you recall a letter he sent you in which he declined to act further as your attorney?

A. Yes, I do.

Q. I have a letter which is in evidence as Defendants' Exhibit 67, dated December 18, 1940, and ask whether you have seen that before.

(Handing paper to witness.)

A. Yes, I have.

Q. Do you recall receiving that letter?

A. Yes, sir.

Q. What did you do when you received that letter?

A. Went down to see Mr. Alberts.

Q. Tell us what occurred there.

A. Well, we went down to see Mr. Alberts because we had no other place to go, Mr. Hobbs refused to act as our attorney an longer, and we went down to Mr. Alberts to get some advice and Mr. Alberts advised us to go back to see Mr. Hobbs again and, so, we went back to see Mr. Hobbs.

Q. Do you recall when that was with respect to the date of this letter?

A. That must have been somewhere past the middle
640 of the month, oh, I would say somewhere between the 15th and 18th, somewhere like that.

Q. Did you go back to see Mr. Hobbs?

A. Yes, we did.

Q. When?

A. Oh, that was, I believe, the same day or the following day after Mr. Alberts had told us to go back to see Mr. Hobbs.

Q. Tell us what occurred when you saw Mr. Hobbs again.

A. When we talked to Mr. Hobbs this time, why, we told Mr. Hobbs that we didn't think he was going about the thing in the right way to get an equitable settlement and he asked us to suggest something and we told him that we thought Mr. Fidler had something on George B. Thomasma to make him sign that affidavit and if he would go after him from than angle, we would probably get somewhere.

And he evidently—

Q. Who said that?

A. Mr. Larson.

Q. To whom?

A. To Mr. Hobbs.

Q. Tell us what else was said there.

A. Well, Mr. Hobbs didn't say much of anything, 641 only he said that might be a good idea, to go after him from that angle, and the following day they come up with the agreement we eventually signed.

Q. When did you sign that agreement?

A. On the 20th, I believe.

Q. What time was it with relation to that earlier meeting you discussed?

A. It was either the following day or the day after.

Q. Did you see Mr. Hobbs on the 20th?

A. Yes.

Q. Where?

A. At his office.

Q. Who was there?

A. Just Mr. Larson, myself and Mr. Hobbs.

Q. Tell us what occurred.

A. Well, we went in there and Mr. Hobbs had this agreement ready and he gave us to understand that if we didn't sign this agreement, why, we were just going to go to jail.

Q. You say he gave you to understand that. What was said?

A. He told us Mr. Wacker, Mr. Lindsey and Mr. Fidler were pretty mad and if we didn't sign this agreement, they were going to unleash the dogs.

642 Q. Did anybody use the word "jail"?

A. Yes, Mr. Hobbs told us that in the first place. Well, that conversation came on before the signing of the agreement. It was before the—oh, maybe ten or fifteen minutes before the signing of the agreement, before Mr. Lindsey and Mr. Wacker and that statement come in.

Q. Where did that take place?
A. At Mr. Hobbs' office.
Q. Was the agreement ever signed?
A. Yes, it was.
Q. When?
A. On the 20th of December.
Q. Was there anything else occurred at that meeting?
A. Yes, Mr. Hobbs said if we signed that agreement, everything would be over with and they would have a big bonfire.
Q. Did anything else occur? Tell us everything fully, what happened and what you did after that.
A. We signed the agreement expecting they would burn up all the testimony we had given and, while the agreement wasn't to our liking, we were made to understand we would either sign the agreement or have to go to jail.
Q. Did you ever see Mr. Hobbs after that?
643 A. No.
Q. What did you do after the agreements were signed?
A. We just took our agreement, that is, our copy of the agreement, and I went on home; Mr. Larson and I both went on home.
Q. Going back, Mr. Carlsen, to a meeting you said you had in Mr. Alberts' office sometime early in November where Mr. Joseph Johnson was present, was there any discussion there of where Mr. Alberts had procured the information that he confronted Mr. Larson with?
A. Yes, he did. He just said he had come from Mr. Fidler's office.
Q. Did he tell you of a meeting there?
A. Yes, he told us he had been to a meeting there and that Mr. Wacker was there and George B. Thomasma.
Q. What else was said of that meeting, if anything?
A. I don't recall anything much more that was said about the meeting there except that they confronted Mr. Larson with evidence that he hadn't been telling the truth.
Q. Did you participate in that discussion at all?
A. No.
Q. Did Mr. Joseph Johnson say anything?
644 A. The only thing I rerember him saying was he was pretty mad and he was going to find some way to break the contract with us.
Mr. Ooms: That is all from Mr. Carlsen.

Cross-Examination by Mr. Fidler.

Q. Mr. Carlsen, you testified in Interference No. 77565 as Walter Carlsen, did you not?

A. Yes, sir.

Q. And you also signed the incorporation papers and other papers having to do with Precision Instrument Manufacturing Company as Walter Carlsen?

A. Yes, sir.

Q. And you also signed the agreements that were entered into, or, the agreement that was entered into with Automotive in connection with the Interference as Walter Carlsen?

A. Yes, sir.

Q. And you also signed an agreement, did you not, that was entered into between Precision and Snap-On Tools Corporation as Walter Carlsen?

A. Yes, sir.

645 Q. Now, you have testified as to a conference that you had with Mr. Hobbs at his office on November 28, 1940 as having been—as having talked to Mr. Alberts or having been to Mr. Alberts' office with Mr. Larson in respect to testimony that was given in Interference No. 77565.

I wish you to start at the beginning, as near as you can recollect, and tell me in detail everything that you said or Mr. Larson and Mr. Hobbs said at that first meeting.

A. Well, that would be kind of hard to do.

Q. Let's have your best recollection.

A. Well, when we went to Mr. Hobbs' office and we told him Mr. Alberts had recommended him as an attorney for us, then we went on and told him just exactly what had happened during the taking of the depositions.

Q. What did you tell him now, just exactly what had happened during the talking of the depositions?

A. Well, that I can't recall. I couldn't recall it word for word. I told him I had given some testimony that wasn't the truth.

Q. You had given testimony—

The Court: Just a moment. Are you represented by counsel here, Mr. Witness?

646 The Witness: No sir.

The Court: You understand you don't have to give any testimony that might be used against you in some other prosecution. You understand that?

The Witness: Yes, sir.

The Court: When he asks a question, you don't have to answer. You are under no obligation to answer any question that might incriminate you in any prosecution. Apparently you are not represented by counsel and haven't been advised as to what your constitutional rights are.

Mr. Fidler: Q. I will ask you now, Mr. Carlsen, whether or not Mr. Alberts consulted you with respect to the pleadings filed in thise case before they were filed?

A. No.

Q. Did anyone consult you at any time with respect to pleading in thise case that Kenneth R. Larson and certain of his witnesses committed perjury in Interference No. 77565?

A. Yes, I believe Mr. Ooms did. I think Mr. Ooms spoke to me about that one time at his office at a conference.

Q. When was that?

A. Oh, I just can't recall the date. It was along when we had first retained Mr. Ooms as an attorney for us.

647 Q. What were you asked in that respect by Mr. Ooms?

Mr. Ooms: I object to this as not being cross-examination on the direct. What he discussed with me wasn't asked about in the direct examination. This man is no longer a party to this suit, no longer an adverse party.

The Court: The bars are pretty well down. I am going to allow questions to be asked about anything except questions that might incriminate this witness and he is going to be advised he don't have to answer such questions.

Mr. Fidler: Will you read the question, please?

(Pending question as above recorded read by the reporter.)

The Witness: A. I don't just remember what it was. I just remember the discussion. I don't remember just exactly what it was or even any part of it.

Mr. Fidler: Q. What was the discussion?

A. It was about this trial to come, this Interference, and so on.

Q. Was there any discussion regarding the testimony you had given in Interference No. 77565?

A. I just don't remember.

Q. Did you give anyone permission to plead in this case or to testify in this case you had committed per-

648 jury in Interference No. 77565?

A. I wasn't in this case; I wouldn't have to give any permission.

Q. Did you hear Mr. Kenneth R. Larson testify in this case?

A. Yes.

Q. Did you hear Mr. Kenneth R. Larson testify to the effect that you gave testimony in Interference No. 77565 which was false and which you knew to be false?

Mr. Ooms: I ask the witness be instructed not to answer. He is not here represented by counsel. I represented him when he was first a defendant. I think, if the court please, I may be requested to represent him as a witness. He is not a party to the case and I would like to instruct him not to answer. There is a possibility it may incriminate him.

Mr. Smith: If the court please, I would like to point out for the purpose of aiding you that Mr. Carlsen's deposition was taken in the pretrial matter before we went into this hearing and Mr. Carlsen's deposition shows that he has already testified he gave false testimony in this Interference; he has already testified that in the pretrial deposition.

Mr. Fidler: Your Honor, in the pleadings in this
649 case, there was first an original petition, nothing stated about this matter. In the first amended petition, nothing stated about this matter, and then a second amended petition, in which it was alleged Kenneth R. Larson and certain of his witnesses did testify falsely, or allegedly so, and a third amended petition filed in which the matter was pleaded directly and in that pleading in Paragraph 30 it was stated indirectly in the beginning with respect to Kenneth R. Larson but later in that paragraph that other of the witnesses had testified falsely and, in that connection, in connection with discovery in the pretrial depositions, this witness admitted that he had knowingly given false testimony in the Interference, and I think this matter goes directly to the credibility of this witness in this proceeding.

The Court: Well, I don't see how all of these matters you have been discussing here have anything to do with this question you asked. You asked him—

Read the question, please Mr. Reporter.

(Pending question as above recorded read by reporter.)

The Court: The question, "Did you hear him give that testimony?"

650 I don't see any objection to that question.

Did you hear Mr. Larson testify here the other day?

The witness: Yes.

The Court: That is the answer. He says "Yes."

Mr. Fidler: Q. Was Mr. Larson's testimony so given correct?

The Court: Now, if they want to renew their objection, I will sustain it.

Mr. Ooms: Now, I would like to object that the question might incriminate the witness.

The Court: I will sustain it. Even if this man did testify at this other hearing you tell about, I don't understand you can bring in witnesses and then permit them to incriminate themselves. I don't believe the system of American justice allows you to do that in a situation of that kind. Our Supreme Court has frequently criticized the officers of the government for doing that very thing.

Mr. Lindsey: May I say this, please? This man was an officer of the Precision Corporation. Mr. Ooms and Mr. Freeman announced that all privileges would be waived. They represented this man. They represented the Precision Corporation, one of the defendants. This man has testified. He testified one way in his pretrial deposi-
651 tion which Mr. Ooms has already interrogated the witness on. Now, he is testifying to the contrary at this hearing. When Mr. Ooms went into this deposition, I submit he threw the matter open.

Furthermore, as I understand the matter, if your Honor please, when a witness is on the stand, you have a right to impeach him even if it involves perjury.

They have made these allegations and if we can't establish them through the witnesses who have already admitted perjury, I don't know how we can answer the pleadings.

I always assumed you have a right to attack the veracity of a witness.

The Court: You have.

Mr. Lindsey: And even if he incriminates himself, particularly, when he has already waived the right he has—

The Court: How did he waive it?

Mr. Lindsey: He waived it in the pretrial deposition.

The Court. I asked him and he said under oath he is not represented by counsel and I don't know how he is waiving his rights. I don't know he was represented.

Mr. Ooms: He never was.

Some of the other witnesses were. When I came in
652 here the day of the first adverse deposition and said all privileges were waived, I wasn't representing this

nian. I was representing Precision Instrument and Kenneth R. Larson.

And, as far as reading the allegations in the pleadings is concerned, I don't believe the plaintiff has anything to meet except the proof.

Mr. Lindsey: At this time, your Honor, I will make a demand upon the defendants' counsel who prepared the pleadings, and Mr. Freeman who is back of him, to state who are these witnesses of Larson's who you allege perjured themselves in the petition, Snap-On petition, and in Precision and Larson's answer.

I think we should have that allegation cleared up at this time.

Mr. Ooms: I respectfully decline to answer.

Mr. Lindsey: Then I move that the allegations be stricken from the pleadings, if your Honor please.

The Court: Do you intend to make proof on it?

Mr. Ooms: I have made proof that Kenneth R. Larson has. I do not intend to make proof as to any other witness.

The Court: Then, so far as any other allegations are concerned, they may be stricken.

You now allege that there is perjury by Larson.

653 Mr. Fidler: Q. Mr. Carlsen, will you now please state in detail, as far as you can, just what was said at the first conference with Mr. Hobbs at his office on November 28, 1940?

The Witness: A. I believe I have just told you.

Q. I would like you, in order that the record may be clear now, just state what was said, as far as you can recall.

A. Well, we went to his office and told him that Mr. Alberts had recommended him, and that we were kind of in a spot; we would like to have him see if he could not do something about it. And we went on and told him the kind of spot we were in, and he then said that he would get in touch with you and see what he could do about it.

Q. What kind of spot were you in, as you told Mr. Hobbs?

A. That kind of puts me on the spot again, doesn't it?

The Court: If you think it might incriminate you, you can refuse to answer.

Mr. Fidler: Q. Do you so refuse to answer?

The Witness: A. Yes.

Q. Did Mr. Larson tell you at that time, or tell Mr.

Hobbs at that time that he had committed perjury in Interference No. 77565?

654 A. He told Mr. Hobbs that he had made some testimony that was not true.

Q. Now have you told us everything that you can recollect, as to what was said at that meeting of November 28th at Mr. Hobbs office?

A. Just about everything that I can recollect.

Q. Now, that conference in Mr. Hobbs' office on November 28, 1940, took quite some time, did it not?

A. No, that was not so long.

Q. How long did that conference last?

A. Well, I would say somewhere between fifteen minutes and a half hour.

Q. Then, I believe you testified in your pretrial deposition that it only took about ten minutes?

A. That is possible; I don't remember just how long it took. I know it was a very short conference.

Q. Now, how long did the conference at Mr. Alberts' office take, prior to the time that you went over to Mr. Hobbs' office on November 28th?

A. That was also very short.

Q. Just what happened there; what is your best recollection now as to everything that was said in that conference, at Mr. Alberts' office?

655 A. Well, Mr. Alberts confronted Mr. Larson with the conversation that he had over in your office; and he wanted to know from Mr. Larson whether it was so or not.

Q. Did Mr. Alberts tell Mr. Larson what the conversation was, that he had had in my office?

A. Yes, he did.

Q. What did he tell him in that respect?

A. The only part of it I recall is the fact that he had a drawing there that some one else was supposed to have made; and Mr. Thomasma evidently proved that he had made it.

Q. Did Mr. Alberts tell Mr. Larson at that time that Mr. Thomasma had made that drawing?

A. Yes, he did.

Q. Was there anything else said to Mr. Larson at that time?

A. Yes, he said we were in a pretty bad spot, and if that

was true he didn't want anything more to do with it, and he better go out and get himself a lawyer.

Q. Did he explain what he meant by saying that you were in a pretty bad spot?

A. Yes, I think he did.

Q. What did he say in that respect?

A. Well, I just don't remember.

656 Q. Who was present at that conference in Mr. Alberts' office?

A. Mr. Johnson, Mr. Alberts, Mr. Larson, and myself.

Q. Did Mr. Johnson do any talking at that conference? —I am talking about the conference November 28th at Mr. Alberts' office, before you went over to Mr Hobbs' office.

A. Yes; that was the day that Mr. Alberts and Mr. Johnson was at your office?

Q. That is correct.

A. Yes. Well, Mr. Johnson seemed pretty peeved; and the only things I remember him saying was that he was going to find some way to break our contract.

Q. What was Mr. Johnson peeved about, do you know?

A. Well, sort of a breach of contract, I suppose, between Mr. Larson and the Snap-On Tools.

Q. You were familiar with contracts between Precision or Mr. Larson and Snap-On at that time, were you not?

A. Not too familiar; I had seen them, but I had never paid much attention to the contracts.

Q. Did you know at that time what Mr. Johnson meant by the breaking of the contracts?

A. Yes, I had a pretty good idea.

Q. What was it?

657 A. It meant that he would terminate the contract that we had for selling tools to them.

Q. Well, what was the basis for this termination of the contract?

A. I don't know; he didn't say.

Q. Now, during your pretrial deposition, did you testify as to the facts that you have testified here, respecting that I might have something on Mr. Thomasma, and some pressure might be used because of that?

A. In my—

Q. Your pretrial deposition, that you gave in Mr.—

A. Oh, in Mr. Freeman's office?

Q. Yes.

A. No; I do not believe I did.
Q. Why did you not so testify?
A. I just did not recall it at the time.
Q. Well, you recall it now, I believe, in your testimony?
A. Yes.
Q. Well, what refreshed your recollection?
A. Oh, in anything like this, little things come to you from time to time; you remember things that happened.
Q. Do you know whether Mr. Wacker testified in the pretrial deposition after you testified?
658 A. No, I do not.
Q. Now, you have referred to a statement that you say was made by Mr. Hobbs, to the effect, about unleashing the dogs; did Mr. Hobbs tell you who made that statement?
A. No, he didn't say which one of you three made it. He came back and left us with the idea that all three of you made it.
Q. Whom do you mean by all three?
A. You and Mr. Wacker and Mr. Lindsey.
Q. Now, just what did Mr. Hobbs say to you in so telling you that we had said that, about unleashing the dog?
A. He told us that Mr. Wacker and Mr. Lindsey and you were pretty mad; and unless we signed the agreement soon, that you were going to unleash the dogs.
Q. But he never did tell you who, or that any one specifically did say that?
A. No, not any one individual.
Q. Did Mr. Hobbs use the expression that "They said they would unleash the dogs," or anything like that?
A. Yes.
Q. He used the expression "They?"
A. Yes.
Q. Did he explain to you whom he meant by that?
A. No.
659 Q. Where did you get your information as to who it was?
A. Because he mentioned your names, all three of you.
Q. Oh, you deducted then—
A. No, no, I did not deduct; he actually mentioned your names.
Q. In what respect?
A. When he said that you were going to unleash the dogs.

Q. In other words, did he name names specifically, when he said they were going to unleash the dogs?

A. He said Mr. Lindsey, Mr. Wacker and Mr. Fidler were pretty mad, and unless we signed the agreement quickly they were going to unleash the dogs.

Q. Did he explain to you who "They" were?

A. Well, he couldn't say it any plainer than saying Mr. Wacker, Mr. Lindsey and Mr. Fidler.

Q. Now, you have also testified that Mr. Hobbs said that there would be a big bonfire?

A. Yes, sir.

Q. Did Mr. Hobbs tell you who said that?

A. No.

Q. Now, you are absolutely testifying that Mr. Hobbs used the word bonfire?

A. Yes, sir.

Q. Now, just what did Mr. Hobbs say to you in that
660 respect; and I want it in as much detail as you can give it:

A. Well, he said that after we signed the agreement there would be a big bonfire.

Q. Was anything else said?

A. There was something, but I just cannot recall it; there was something said after that, but it did not amount to a lot.

Q. Now, in the negotiations leading up to the contracts that were entered into in the settlement of the Interference, did you at any time ever talk to either Mr. Wacker or Mr. Lindsey or myself?

A. No, sir.

Q. Or any one connected with Automotive Maintenance Machinery Company?

A. No, sir.

Q. All of the talks that you had in that connection were with Mr. Hobbs, is that correct?

A. That is correct.

Q. Did you have any contact with Mr. Alberts in connection with the settlement of the Interference, entering into the agreements in settlement of the Interference?

A. No.

Q. That was handled solely by Mr. Hobbs?

661 A. Well, I was not always there; I only went to Mr. Hobbs' office about three or four times.

Q. You were president of Precision Instrument Company at the time?

A. I was secretary-treasurer.

Q. And you kept yourself informed as to all the business matters that were going on at that time?

A. Not too well informed; I had a little more to do than just—

Q. But you kept informed as to the negotiations that were going on?

A. Oh, yes.

Q. And you have no knowledge of any one doing anything on your behalf in connection with the settlement of Interference No. 77565, other than Mr. Hobbs; is that correct?

A. Not to my knowledge.

Q. Then it is correct, so far as your knowledge goes?

A. Yes.

Q. Mr. Carlsen, I show you a letter dated October 26, 1938, from Snap-On Tools Corporation to Kenneth R. Larson, marked for identification in this case as Automotive Exhibit No. 24; I am handing you a photostatic copy, and I will ask you whether or not you recollect ever seeing the original of that letter.

662 A. Yes, I have.

Q. When did you first see that letter?

A. Sometime in the latter part of November or early part of December; somewhere along in November or December.

Q. Under what circumstances did you first see that letter?

A. When I first started to sell the stock of the Precision Instrument Company.

Q. Was any use made of that letter by you?

A. Yes, I used it to convince the people that I was selling the stock to that we had the orders for tools, and had the Snap-On Tools Corporation as a fellow agent.

Q. In other words, that letter was received some time before the Precision Instrument Manufacturing Company was incorporated, and you used that letter to show to prospective purchasers of stock what was going to happen, in inducing them to purchase stock; is that correct?

A. That is right.

Mr. Fidler: Your Honor, I wish to offer at this time the

letter just referred to by the witness, as Automotive Exhibit No. 4.

The Court: Any objection?

Mr. Ooms: No objection.

The Court: It may be admitted.

663 (Said document, so offered and received in evidence, was marked PLAINTIFF AUTOMOTIVE EXHIBIT NO. 4.)

Mr. Fidler: Q. Did you know Mr. Thomasma at the time you were taking this letter, Automotive Exhibit 4, around?

A. Yes, I did.

Q. Trying to sell stock?

A. Yes, I did.

Q. And how long had you known Mr. Thomasma?

A. Well, I met him when the letter first came into my possession; that is, a few days before then.

Q. That is somewhere around in October, 1938?

A. No, it was later than that; either November or December.

Q. And did you know at that time that Mr. Thomasma was an employee of Automotive Maintenance Machinery Co., plaintiff in this case?

A. Not when I first met him, no.

Q. When did you first learn that fact?

A. Oh, after I had been acquainted with him about two weeks.

Q. And while you were still selling stock or trying to sell stock, and before the incorporation of Precision?

A. Yes, sir.

664 Q. Now, do I understand it to be the fact that you tried to keep Mr. Thomasma from testifying in Interference No. 77565?

A. Yes, sir.

Q. Why did you do that?

A. Because the agreement with the Snap-On Tools Corporation, I think, did not allow any one from AMMCO or any of its competitors to have any connection with our company.

Q. In other words, you knew at the time that the Interference was going on that there was such an arrangement between Snap-On and Mr. Larsen, or Precision; is that correct?

A. That is right.

Q. And that you wanted to prevent Mr. Thomasma from testifying in Interference No. 77565, because that would bring him out into the open, and it would impair your relationship with Snap-On Tools Corporation; is that correct?

A. That is right.

Q. Now just what did you do in trying to keep Mr. Thomasma from testifying?

A. Nothing; just asked him not to.

Q. How many times did you ask him not to?

A. Once.

665 Q. And when was that?

A. Oh, quite some time before the depositions were taken.

Q. And just what did you say to Mr. Thomasma at that time?

A. I told him I didn't feel it was good for the company that he was to come out in the open. If he were to testify, why, it would probably ruin our relationship with Snap-On.

Q. When did you first learn, if ever, that Automotive Maintenance Machinery Company; plaintiff in this case, was a supplier of wrenches, Torque wrenches to Snap-On Tools Corporation, defendants in this case?

A. Some time in December, 1938.

Q. That was prior to the time that Precision Instrument Manufacturing Company was formed?

A. Yes, about at that time; yes.

Q. And under what circumstances did you learn that fact?

A. Oh, just by chatting amongst one another.

Q. Well, who was the one another?

A. Mr. Larson, Mr. Thomasma, and I.

Q. And no one else?

A. No.

Q. Did you ever talk to any one connected with 666 Snap-On?

A. Well; not at that time; no.

Q. Now, at the time that you were selling stock, or trying to sell stock for Precision, and were using this letter, Automotive Exhibit 4; you knew that Precision was going to take away from Automotive its business with Snap-On, did you not?

A. No.

Q. You did not know that?

A. Not at that time, no.
Q. Well, when did you learn that fact?
A. About the time the company was incorporated.
Q. And that was about in December?
A. That was the latter part of December.
Q. 1938?
A. Yes.
Q. And where did you get that information?
A. From Mr. Larson.
Q. No one else?
A. Not that I remember.
Q. Now, as I understand it, Mr. Thomasma did do some work for Precision; is that correct?
A. Oh, yes.
Q. And just what work was that?
A. Oh, he helped us build some punches when we
667 started out; he done a little grinding in there several evenings.
Q. And at that time you knew that Mr. Thomasma was an employee of Automotive Maintenance Machinery Company?
A. Yes.
Q. And how long did Mr. Thomasma continue that work with Precision?
A. Oh, not over a week or two, or possibly three weeks; I don't just recall. It was not very long.
Q. Well, why was it that Mr. Thomasma didn't continue longer with Precision?
A. That I don't know.
Q. You have no idea?
A. No, only that we just didn't want him around there; we didn't think it was good for the company for him to be around there, because some of the Snap-On men may come down there and recognize him.
Q. Who told you that some of the Snap-On men might come down and recognize Mr. Thomasma?
A. George did.
Q. When did he tell you that?
A. Well, because he had the interests of the company at heart at that time too.
Q. When you say George did, you mean George Thomasma?
A. Yes.

668 Q. You knew that Mr. Thomasma had been up to Snap-On Tools Corporation at other times, or had at sometime?

A. At sometime or another.

Q. And that he knew some one at Snap-On Tools Corporation.

A. Well, that I didn't know, that he knew some one there. He had been there to repair some wrenches, or at least he said he was.

Q. And for that reason, in view of the contractual relationship with Snap-On, you had to keep him out of the picture, then?

A. That is right.

Mr. Fidler: That is all the cross-examination.

The Court: Is there any redirect examination?

Mr. Freeman: No redirect, your Honor.

The Court: All right; you are excused.

(Witness excused.)

Mr. Freeman: Mr. Johnson, will you please take the stand?

669 JOSEPH JOHNSON, called as a witness by defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Mr. Johnson, will you please state your full name?

A. Joseph Johnson.

Q. And your residence?

A. 4203 Taft Road, Kenosha, Wisconsin.

Q. And you are at present president of Snap-On Tools Corporation, one of the defendants in this cause?

A. I am, sir.

Q. And how long have you been president of that company?

A. Since the spring of 1939.

Q. And who was your predecessor, or who was president prior to the spring of 1939?

A. Mr. E. W. Myers.

Q. Now tell us generally what your duties are with Snap-On Tools Corporation, as its president,—just briefly.

A. General administrative officer.

Q. And you have junior executives that do the work, so to speak?

A. We do; yes, sir.

670 Q. And what is the general business of Snap-On Tools Corporation?

A. We are a tool manufacturing concern.

Q. And how long have you been connected with that company?

A. Since the inception of the company, in 1920.

Q. And all during the period of the last twenty-three years Snap-On Tools Corporation has been a manufacturer of tools?

A. We have; yes, sir.

Q. And who has represented you, patentwise; that is, when I say you, I mean your corporation.

A. Mr. Harry C. Alberts.

Q. And has that been for more than the ten years last past?

A. It has.

Q. And you are acquainted with Kenneth R. Larson?

A. I am.

Q. Do you recall when you first met Mr. Larson?

A. In 1938.

Q. And do you recall in what connection?

A. He came into the office with a tension measuring wrench.

Q. And was any one else present at the time he 671 came in; that is, besides yourself?

A. I do not recall whether I met him the first time that he came in there; I met him through Mr. Myers and Mr. Allen Howes, of our sales department.

Q. Mr. Myers was president at that time?

A. He was president at that time.

Q. And Mr.—

A. Allen G. Howes.

Q. And what was he?

A. Of our sales department.

Q. Do you recall any conversation that you had with Mr. Alberts shortly after November 20, 1940, in connection with an Interference proceeding involving Larson and Zimmerman, or the Automotive?

A. Yes, I do.

Q. Will you just go ahead and tell us what was said

to you about Mr. Alberts, by Mr. Alberts, what information he gave you; just tell it in your own words, briefly.

A. Well, word came to me from Mr. Alberts that Mr. Fidler's office had been in touch with him, and that he had seen Mr. Fidler; and that at that meeting Mr. Alberts had been told that they had information to the effect that Larson had given false testimony in the Interference

672 proceedings.

Q. And did you know prior to that telephone call from Mr. Alberts that there was an Interference going on in the Patent Office, between Zimmerman in behalf of Automotive and Larson on behalf of Precision?

A. Yes, I knew that was going on.

Q. And who informed you of that?

A. Mr. Daniel.

Q. And who is Mr. Daniel?

A. Mr. Daniel is assistant secretary; and he has been handling the legal work for quite a few years. He heads up our new tools committee.

Q. Mr. Daniel is an employee of Snap-On, the defendant here?

A. Yes, sir.

Q. What did Mr. Alberts ask you to do after he called you, shortly after November 20, 1940?

A. The purpose of the call was to arrange for a meeting at which I would be present to hear the testimony.

Q. And when you say to hear the testimony, just what are you referring to?

A. Well, I am referring now to the information that came to him with respect to the false testimony that had been given in the Interference proceedings.

673 Q. And did he tell you where you were to go to hear this testimony?

A. I believe so; although I was to meet him at his office.

Q. And when did you meet him at his office, in order to hear this so-called testimony?

A. It was on November 28th.

Q. Of 1940?

A. Of 1940, yes.

Q. And you met Mr. Alberts on November 28, 1940; then what did you and Mr. Alberts do?

A. Well, we went from his office over to the office of Mr. Fidler.

Q. And tell us now, when you entered the office of Mr. Fidler, or rather, the offices of Davis, Lindsay, Smith & Shonfs, what happened; just trace your progress through that office, into Mr. Fidler's office; and tell us what happened there.

A. Well, we entered the reception room, and Mr. Alberts made our presence known. We waited for a short time, and then were ushered into Mr. Fidler's office. Then in Mr. Fidler's office there was present at that time Mr. Fidler, Mr. Wacker, Mr. Allen, Mr. Alberts, and myself.

Q. And after you went into Mr. Fidler's office, what
674 was said?

A. Mr. Alberts introduced me; it was the first time that I had met Mr. Fidler; and he made the statement at that time that we were there solely in behalf of Snap-On Tools Corporation. To which Mr. Fidler replied that so far as he was concerned Snap-On was Precision, and Precision was Snap-On.

Q. Then what took place, after Mr. Fidler told you, or rather told Mr. Alberts Snap-On was Precision and Precision was Snap-On; what took place next?

A. Of course, that was a matter for the attorneys; they sparred for quite some time. And I don't know that I concerned myself too much with it, because I do not recall definitely everything that was said. But I do know that later on a Mr. Thomasma was called into the office.

Q. And were you told the purpose of having Mr. Thomasma come into the office?

A. Well, I already understood the purpose, because Mr. Alberts, when he originally called me, told me that Fidler's office had information that the testimony given by Mr. Larson had been false.

Q. And when Mr. Thomasma came into the office, what took place then?

A. Well, we were told that he was George B.
675 Thomasma; and he was questioned. And there were several things brought out there that came to me for the first time; the first being that Mr. Thomasma said on questioning that he had invented the wrench, or was the party that had made the drawing for the tool that Larson had claimed was drawn by a high school boy. Furthermore, I learned that Thomasma was an ex-employee of AMMCO, and that he was also associated with the Precision Instrument Manufacturing Company.

Q. And who questioned Mr. Thomasma at the time you obtained the information that you have just given in your preceding answer?

A. Mr. Fidler asked a number of questions.

Q. And about how long did that examination or questioning of Mr. Thomasma take place?

A. Oh, it is difficult to recall; those are principally things that I was interested in. At least, they gave me information I had never had before.

Q. And about how long were you at Mr. Fidler's office; that is, the whole conference?

A. Oh, I would judge we were there probably an hour and a half or two hours.

Q. And was that in the morning or afternoon?

A. In the morning.

676 Q. And did Mr. Alberts examine or ask Mr. Thomasma any questions, after Mr. Fidler had concluded his questioning of Thomasma?

A. There was one thing that he did ask him, that I recall; and that was whether or not Mr. Thomasma had ever met Mr. Alberts or myself.

Q. And what was Thomasma's answer?

A. No.

Q. Did Mr. Fidler say anything about Snap-On at that particular time, at that meeting?

A. Well, there was one reference made that I took exception to; and that was that he said that Snap-On's hands were not entirely clean in the matter.

Q. And what did you say?

A. And I took exception to it; I told him that we were there with clean hands, and that we had always dealt on a very high plane.

Q. Did you tell him anything as to how you expected to conduct your business at that time?

A. Well, we have always conducted it on that basis, and intend to continue to conduct it on that basis.

Q. Now, after Mr. Alberts had questioned Mr. Thomasma, and after Mr. Fidler had questioned Mr. Thomasma, what did Mr. Alberts say, if anything?

677 A. Oh, I don't recall. It was rather shocking to hear that we had been connected with somebody that had formerly been with one of the supplier accounts.

Q. Did Mr. Alberts say anything about what he was going to do in connection with the Interference?

A. Oh, yes; he did state to Mr. Fidler that in view of the information that we had learned, that we would immediately get in touch with Mr. Larson; and that if the facts were substantiated by Mr. Larson, that he would grant a concession of priority, or whatever it happened to be, in the Interference proceedings; and also that he would withdraw as attorney for Larson.

Q. And then what happened; did you stay at the conference, or did you leave?

A. Well, we left shortly after that.

Q. Did Mr. Fidler make any statement to you or Mr. Alberts, or to both of you, as you were leaving?

A. Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker; that Mr. Wacker had spent considerable money on tension wrench patents, and that unless a satisfactory adjustment was made with him, that he would unleash the dogs.

Q. Mr. Fidler told you that?

678 A. Yes, sir; he made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States patent officials, and that it was even a matter for the United States District Attorney.

Q. And you and Mr. Alberts then left Mr. Fidler's office?

A. We did, sir.

Q. And where did you go?

A. We went to Mr. Alberts' office.

Q. What took place there?

A. Mr. Alberts immediately called Mr. Larson and told him to get down to his office as quickly as he could, and to bring with him Mr. Carlsen. And there apparently was a little fiddling on the phone; and he said the matter was very urgent and important, and they both had to be there and be there quick.

Q. And did Mr. Larson and Mr. Carlsen come down to Mr. Alberts' office that day?

A. They did.

Q. Was that in the morning or afternoon?

A. That was in the afternoon.

Q. And tell us now what took place at Mr. Alberts' office?

A. At that time, when they came in Mr. Alberts advised them of the meeting he had in Mr. Fidler's office;

and that Mr. Thomasma was there, and that Thomasma
679 had very definitely stated that he had made the drawing, or the date of the drawing was correctly shown; that he had been a former employee of AMMCO, and that he was also connected with the Precision Instrument Company.

Q. And who all was at this conference in Mr. Alberts' office?

A. Mr. Larson, Mr. Carlsen, Mr. Alberts, and myself.

Q. And what did Mr. Alberts say to Mr. Larson, over and above the fact that he had been at Mr. Fidler's office, and talked to Mr. Thomasma?

A. Well, he told him that it was a very serious matter. —I am getting a little bit ahead of myself.

Q. Just tell the story as you recall it, Mr. Johnson.

A. When he was confronted with the information obtained in Mr. Fidler's office, he did finally say that Thomasma was connected with him; that he knew that he had been connected with the AMMCO organization. But with respect to the drawing, he delayed there; he wouldn't say yes and he wouldn't say no. And Mr. Alberts told him it was a very serious matter, and that he better get himself another attorney, and get another attorney quick.

Q. Did Mr. Larson finally admit that the drawing was made by Mr. Thomasma, and not by a high school boy?

680 A. Well, later—

Q. He told that to you that afternoon?

A. Yes, sir.

Q. November 28, 1940, in Mr. Albert's office?

A. That is correct.

Q. And what happened after that?

A. Well, I returned to the plant and discussed this with my associates; arranged for a meeting there to have Mr. Alberts present. That was several days later. And we had Mr. Alberts outline the entire situation, from beginning to end.

Q. Did Mr. Alberts tell Mr. Larson at this meeting of November 28th that he would continue to represent him?

A. No; he said he would no longer represent him.

Q. What else did he tell him?

A. Well, he told him to get another lawyer.

Q. Do you recall a remark that Mr. Alberts made in connection with this suggestion that Larson get himself another lawyer?

A. Yes, he said that the matter was a rather serious one; and that if the information that we had got in Mr. Fidler's office was substantiated, that he would have to get himself another attorney.

Q. Now coming back to the time when you asked
681 Mr. Alberts to come up to Kenosha, as you have just testified, what was the purpose of having Mr. Alberts come up to Kenosha, after November 28, 1940?

A. Well, I wanted my associates to hear from the man who had been living with this case from start to finish, to outline what had transpired.

Q. And how soon after November 28th was it that Mr. Alberts came up to Kenosha?

A. It was within several days.

Q. And were you present when Mr. Alberts told the story?

A. I was, sir.

Q. And about how many other of the executives of your company were present?—When I say executives, I mean people in your employ, not necessarily executives.

A. As I recall, we had our purchasing agent there; we also had a representative from the engineering department; we had Mr. Daniel, who was chairman of the new tools committee; and Mr. Palmer was present; Mr. Seidemann; I believe Mr. Nemitz sat in that meeting; and myself.

682 Q. What was your reaction to the situation after you were acquainted with the facts?

Mr. Lindsey: I object, your Honor, to what this man's reaction was.

The Court: Objection sustained.

Mr. Freeman: Q. What did you do after Mr. Alberts made the explanation to the executives at your plant within a few days after November 28th, 1940? What was the next thing that happened?

A. Well, we continued the—oh, at that time I discussed with Mr. Daniel and had previously discussed with him need in our line for a tension tool, and mentioned to him that he would have to get busy either through our development source or through outside source to see whether or not they could line up a tool of that kind.

Mr. Freeman: Might I get Mr. Lindsey's letter of December 19, 1940, to Mr. Alberts?

Mr. Lindsey: I guess you have that, haven't you, Mr. Freeman?

Mr. Hibben: Do you want the original?

Mr. Freeman: If you have it.

Mr. Hibben: We have our own file copy, if that is what you want, Mr. Freeman.

Mr. Freeman: Q. I hand you a carbon copy which
683 is an original letter from Harry W. Lindsey, Jr., taken from Snap-On's files and will ask you to state whether or not you have seen that copy prior to today.

A. Yes, I have.

Q. And when did that letter come to your attention?

A. Sometime late in December.

Q. And who presented it to you?

A. Mr. Daniel.

Q. I notice that Mr. Lindsey asked Mr. Alberts to send a copy of the letter to you. Can you explain how the letter got into the hands of Mr. Daniel at Snap-On's plant?

A. Mr. Daniel has been handling patent matters at our plant for many years.

Q. And were you in Kenosha shortly prior to your signing of the agreement which is dated December 20, 1940 which you signed on December 23, 1940? Were you out of town?

A. I was out of town, yes.

Mr. Freeman: We offer as Defendants' Exhibit No. 68 the letter of Davis, Lindsey, Smith and Shouts to Harry C. Alberts, with a copy to Mr. Johnson of Snap-On Tools Corporation, which Mr. Lindsey requested Mr. Alberts to send to Mr. Johnson of Snap-On.

Mr. Fidler: No objection.

Mr. Lindsey: No objection.

684 The Court: It may be received.

Mr. Freeman: I would like to read the letter.

(Defendants' Exhibit No. 68 was thereupon read to the Court by Mr. Freeman.)

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 68.)

Mr. Freeman: Q. Did you have Mr. Lindsey's letter of December 19, 1940 before you when you signed the Snap-On Automotive Agreement?

A. Of that I am not certain.

Q. Had you been informed of that letter?

A. I don't recall.

Q. I hand you a letter dated December 19, by Harry C. Alberts to Snap-On Tools Corporation and ask you to

look at it and tell us whether or not you had that letter before you at the time you signed the agreement with Automotive on December 23, 1940.

Mr. Lindsey: Have we seen that letter?

Mr. Freeman: Oh, yes. It is your exhibit, Automotive's Exhibit No. 10. It is a letter taken from the files of Snap-On which we furnished you with.

The Witness: I am not certain that I did.

Mr. Freeman: Q. Did you talk to any one in your plant with respect to that letter?

A. Yes. I have at some time talked with someone 685 about it.

Q. And with whom?

A. Mr. Daniel.

Mr. Freeman: I might, for the convenience of the Court, read Mr. Alberts' letter, Automotive Exhibit 10, which was a letter sent by Mr. Alberts to Snap-On, of December 19th, 1940.

(Automotive Exhibit No. 10 was thereupon read to the Court by Mr. Freeman.)

Mr. Freeman: You may cross examine.

Mr. Smith: If your Honor please, we would appreciate a few minutes recess at this time.

Before doing that, I would like to make this statement to your Honor: Mr. Goodwill, the Court Reporter who took all the depositions, was handed the two note books which I mentioned in my opening statement, for safe-keeping. He has requested that someone take charge of them here in the court room because he is not here at all times, and in case they were demanded in his absence he would be unable to produce them. I ask that we state in the record that he is delivering them to someone in the Court room.

The Court: What can you do with them in his absence?

Mr. Smith: Do you have any objection to my hold-686 ing them until such time—

Mr. Ooms: No objection.

The Court: What can you do with the note books? You can't read his notes?

Mr. Smith: These are the note books of the original Interference which were the two so-called—

The Court: But they are of stenographic characters?

Mr. Smith: These are the books that the former Court Reporter produced from the old Interference.

The Court: You are taking possession of them, and every one has seen you take them, and you will be responsible for them.

(Mr Goodwill handed to Mr. Smith two note books of Thomas L. Raftery, Court Reporter, marked Automotive Exhibits 14 and 15 for identification.)

Cross-Examination by Mr. Fidler.

Q. Mr. Johnson, you have referred to a Mr. Allen G. Howes.

A. I have, sir.

Q. And is he connected with your company?

A. He is.

687 Q. And in what capacity?

A. He is manager of our Cleveland, Ohio Branch.

Q. And where is he located at this time?

A. Cleveland, Ohio.

Q. You have referred to a conference which you learned something about in my office, at which time Mr. Alberts and I alone discussed the matter of testimony in Interference No. 77565. Is that correct, you have knowledge of that conference?

A. He called me after the conference was held.

Q. And how long after the conference was held?

A. I would say it was the same day.

Q. And in calling you what did Mr. Alberts say?

A. He said that you had in your possession information which proved that Larson's testimony was false.

Q. Anything else he said?

A. That was about the sum and substance of it.

Q. And what did you say to Mr. Alberts?

A. Well, just a minute here. He said also that he would like to have for me to hear the information, and I believe it was also your recommendation, and a meeting was arranged for.

Q. And what did you say to Mr. Alberts?

A. Well, at that time, as I recall it, I told him

688 that I would be out of the city, but that I would like to meet with you, and I believe a meeting was arranged.

Q. Is that all that you said?

A. Also at that time I didn't want either Kenneth R. Larson or Carlsen to know about this meeting because I wanted to get my own information and get it straight.

Q. What information did you want to get?

A. Regarding the false testimony that Larson was supposed to have given.

Q. And how did you want to get that?

A. I was going to get it in your office in a meeting.

Q. And after that telephone conversation with Mr. Alberts when did you next see Mr. Alberts?

A. I saw Mr. Alberts on the 28th of November.

Q. And I believe Thanksgiving Day came in there somewhere. Do you remember that?

A. I think it was the week earlier.

Q. I am speaking with respect to the telephone conversation that you had with Mr. Alberts respecting the conference that he had with me when you were not present.

A. It was a week prior to the meeting we held in your office.

Q. When was that with respect to Thanksgiving Day?

A. I think it was before Thanksgiving Day.

689 Q. Where were you on Thanksgiving Day in 1940?

A. I was at home.

Q. And when did you go on that trip that you have just referred to, when did you leave?

A. Shortly after Thanksgiving, I believe.

Q. How many days, or how long after Thanksgiving?

A. Probably the day after.

Q. Do you recollect?

A. Not definitely. No.

Q. Where did you go on that trip?

A. I went to Windsor, Canada.

Q. And how long were you in Windsor, Canada?

A. A little less than a week.

Q. How long did it take you to get there?

A. That is an over-night hop.

Q. Each way it took an over night train ride?

A. Yes.

Q. Did you come through Chicago that trip?

A. I do, sir.

Q. On your way to Canada, what time did you get into Chicago?

A. I came in on a night train.

Q. Do you recollect when that train got in?

A. I don't recall, no.

690 Q. Did you see Mr. Alberts on your way through, going to Canada?

A. I don't believe so.
Q. Don't you recollect?
A. I don't recollect definitely. No.
Q. Do you recollect whether or not any report was made in written form by Mr. Alberts respecting the conference that he had with me when you were not present?
A. Yes, I have seen those reports.
Q. When did you first see those reports?
A. I don't recall.
Q. Well, was it sometime prior to the time that you entered into the agreements in settlement of the Interference?
A. I believe so, yes.
Q. Don't you know what the fact is?
A. I don't know, because Mr. Daniel has been handling the patent matters and we don't confer every day.
Q. It couldn't possibly have been recently, in connection with this case, that you saw them?
A. No, sir.
Q. Now I hand you a document here which purports to be a report and which is marked Automotive Exhibit 12 for identification, and I ask you to examine the same
691 and state whether or not you ever saw that, and I may say I am handing you a photostatic copy.
A. I think I did, sir.
Q. And is this the report that you were just referring to that you had seen but you did not recollect just the time you had seen it?
A. That is one of them. There are numerous reports that are made to us by him.
Q. Numerous reports respecting the conference Mr. Alberts had with me when you were not present?
A. No, with respect to matters handled for the corporation.
Q. How many reports were made by Mr. Alberts with respect to a conference that he had with me in connection with Interference No. 77365, at which time you were not present?
A. There may have been several.
Q. How many were you informed of?
A. I believe there were several that I was informed of.
Q. With respect to any conferences that I had with Mr. Alberts prior to Thanksgiving 1940, at which time you were not present, I am talking about any conference with respect

to Interference No. 77565, how many such conferences were you informed of?

A. I was informed of one, that I know of.

Q. And how many reports were made with respect 692 to that conference?

Mr. Freeman: When you use the word "reports" are you referring to what you have in your hand as a report, or might it be a letter report?

Mr. Fidler: I am referring to Automotive Exhibit No. 12, which I have referred to as a report.

Mr. Freeman: As distinguished from a letter?

Mr. Fidler: Yes.

Mr. Freeman: Or any telephone report?

Mr. Fidler: Yes.

Q. How many reports were made with respect to that conference? I am referring to a written report such as the one I showed you a moment ago.

A. There was one that I know of, yes.

Q. And this one, Automotive Exhibit 12, for identification, is the report that you have just referred to?

A. I think it is.

Q. I ask you to read the last paragraph of this report and to state whether or not the statements made therein are correct.

A. I am now reading paragraph 12:

"I recommend a conference be arranged between Fidler, Wacker of AMMCO, Thomasma and Johnson of Snap-On, and myself. I called Snap-On at 4:30 p.m. and talked 693 to Daniel, also Johnson. Johnson tentatively set the conference for Thursday, November 28th, 1940 at ten a.m. at my office, in that he would be in the east and return to Chicago on that day. Mr. Johnson suggested that this matter be withheld from Larson until this conference had taken place, and thereafter would be submitted to Larson and Carlsen."

Q. Will you explain why you suggested that this matter be withheld from Larson until this conference had taken place and thereafter if would be submitted to Larson and Carlsen?

Mr. Freeman: He has already answered that once, that he wanted to get the information straight.

Mr. Fidler: He has not yet been shown this particular document, Mr. Freeman and your Honor.

The Court: You may answer.

Mr. Fidler: And I think the record should be clear.

The Witness: Will you read that question, please?

(The last question was read by the Reporter.)

The Witness: Because I wanted to hear the information and get it straight from you as you would present it.

Mr. Fidler: Q. What information?

A. The information that you had conveyed to me through Mr. Alberts, that you were in possession of
694 evidence that the testimony given by Larson at the Interference Hearing was false.

Q. Did I convey any information to you through Mr. Alberts?

A. When Mr. Alberts reported to me regarding the meeting that was held in your office that day, I am quite sure that was the subject of the entire conference.

Q. And that was a matter between you and Mr. Alberts. I had nothing to do with that.

A. Except that he reported to me the conference that had been held with you.

Q. Is that all the reasons that you had as to why you were holding this matter from Mr. Larson and Mr. Carlsen?

A. I would say that was sufficient reason.

Q. Did you have any reason to fear that they might do something that would impair your contractual obligations with them?

A. No, other than that if false testimony had been given, I wanted to have something definite before I confronted them.

Q. And what did you want them confronted for?

A. Well, we were dealing with them in all good faith, and if there was anything in the wind that you had indicated, I certainly wanted to know it, so that I could in turn check with them.

695 Q. For what purpose?

A. Because we certainly would not continue to do business with any one that had operated as they had.

Q. Isn't it a fact that you had a contract or an understanding with them with respect to their activities and employment of certain parties?

A. That is correct.

Q. And what was the reason for that arrangement?

A. Because we wanted to deal on a high plane and cer-

tainly did not want a product that could have come out of another plant.

Q. Well, why were you so concerned about not having any one connected with any other company associated with Precision? What did that have to do with your high plane?

A. Well, because we certainly wouldn't want to deal on any tool that had been taken out of some other plant.

Q. At that time that you had dealt with these people, that is, Precision, you were dealing with Automotive, were you not?

A. We were. Yes.

Q. And why did you want to take any precautions with respect to Automotive?

A. Because throughout the years the sort of connections that we have had in our business have been lasting ones, and if there had been any connection between this new Precision Company and AMMCO most certainly we would not want to have had any relations with them.

Q. Well, if you were on good terms with Automotive, was there any reason to suspect that any one of Automotive was connected with Precision?

A. I don't know that there was, no.

Q. Is there any better reason that you can give as to why you did not want Precision to have any one connected with Automotive associated with them?

A. Well, as I have told you, we have always done business on a very high plane and we didn't want to be the distributor for a line that would become involved in litigation.

Q. What position did you hold with Snap-On in 1938?

A. I was vice-president and treasurer.

Mr. Lindsey: I think we may very materially shorten the cross examination of Mr. Johnson. He is president of one of the parties to this litigation and, in order to shorten the cross examination I will offer at this time his deposition which was taken under the discovery rule, together with three exhibits, the first being a letter from Mr. Daniel of Snap-On and Mr. Harry C. Alberts as Automotive's Exhibit No. 7.

Next, a letter from Mr. Alberts to Snap-On, attention of Mr. Johnson, dated December 19, 1940, as Automotive's Exhibit No. 10.

And a letter from Mr. Alberts to Snap-On, attention of

Mr. Johnson, dated October 18, 1938, as Automotive's Exhibit No. 8.

These were all marked for identification during the course of the deposition.

The Court: Any objection?

Mr. Freeman: None whatever.

The Court: All right, they may be received.

698 Mr. Freeman: Did you give the deposition an exhibit number?

Mr. Lindsey: We will fill that in. The reporter is bringing it over and he will be here soon.

(Said documents, so offered and received in evidence, were marked, respectively, AUTOMOTIVE'S EXHIBITS Nos. 7, 10, 8 and 17.)

The Court: All right. Does that conclude?

Mr. Fidler: I have a few questions.

Cross-Examination by Mr. Fidler. (Continued).

Q. Mr. Johnson, at that meeting in my office on November 28, 1940, the persons present were Mr. Frederick G. Wacker, Mr. Victor Allen, yourself, Mr. Alberts, Harry C. Alberts, and me throughout that conference, is that correct?

A. Did you mention the name of Mr. Thomasma?

Q. Not yet but the parties I have mentioned, they

699 were present at all times during that conference?

A. They were.

Q. During part of that conference, Mr. Thomasma was present?

A. He was.

Q. Now, after the conference concluded, you and Mr. Alberts left first, I believe?

A. No, Mr. Thomasma left the office first.

Q. And then you and Mr. Alberts left?

A. We did, yes.

Q. Now, as I understand your testimony, I was the only one present at that meeting who said anything about unleashing the dogs or about referring the matter to the District Attorney or about referring the matter to the Patent Office, is that correct?

A. You were, sir.

Q. Mr. Wacker said nothing along those lines or Mr. Allen?

A. No, sir.
Q. Is that correct, they did not?
A. They did not.
Q. Now, all contacts between the parties on your behalf in connection with the negotiations leading up to the settlement of the interference were made by Mr. Harry
700 C. Alberts, is that correct?
A. It is.
Q. Now, you did not talk to me or to Mr. Wacker or anyone associated with Automotive about that, is that correct?
A. That is correct.
Q. Nor did you ever talk to Mr. Hobbs about that?
A. I have never met the gentleman.
Q. Did you ever tell anyone connected with Automotive, including its attorneys, that Larson had admitted to you that he had committed perjury in testifying in the Interference?
A. No, sir.
Q. Did you ever tell any such thing as that to Mr. Hobbs?
A. I have never met him.
Q. So far as you know, did anyone connected with Snap-On ever tell either Mr. Hobbs or Automotive, including its attorneys, that Larson had admitted perjury to you and to Mr. Alberts?
A. I cannot speak for the others, Mr. Fidler.
Q. Well, you have no knowledge of anyone?
A. I have no knowledge of anyone.
Q. At this time do you have any dealings with Precision Instrument Manufacturing Company?
701 A. We do.
Q. And when did those dealings start?
A. In 1941.
Q. What time in 1941?
A. I believe they began shipping the new wrench in the fall of 1941.
Q. Well, those dealings involve the manufacture and sale of torque wrenches, is that correct?
A. The sale on our part.
Q. And the manufacture by Precision of wrenches for you?
A. That is correct.
Q. Now, I hand you three agreements, one which is

dated December 20, 1940 between Snap-On Tools Corporation and Kenneth R. Larson and Precision Instrument Manufacturing Company, and another between the same parties and dated January 16, 1941, and another dated March 26, 1942, between the same parties, and ask you whether or not those are agreements between Snap-On Tools Corporation and the parties I referred to, and I have handed you photostatic copies which are copies, I understand, of the original agreements (handing documents to witness).

A. This carries my signature.

702 Mr. Fidler: Please read the question.

(Pending question as above recorded read by the reporter.)

Mr. Freeman: If those agreements show they are made by Snap-On and Precision, why, we will agree right now they are O. K.

Mr. Fidler: Q. Is that your signature that appears at the end of each of those agreements?

A. It is.

Mr. Fidler: I wish to offer at this time in evidence the three agreements identified as follows:

The agreement of December 20, 1940 as Automotive's Exhibit No. 3.

The agreement of January 16, 1941 as Automotive's Exhibit No. 18.

And the agreement of March 26, 1941 as Automotive's Exhibit No. 19.

The Court: I understand when there is no objection, they are admitted.

Mr. Freeman: No, we concede the agreements.

The Court: All right.

703 (Said documents, so offered and received in evidence, were marked, respectively, AUTOMOTIVE'S EXHIBITS No. 3, No. 18 and No. 19.)

Mr. Fidler: I may say, your Honor, that the deposition by Mr. Johnson will be Automotive's Exhibit No. 17.

The Court: Have you finished now?

Mr. Fidler: That is all my cross examination.

The Court: Any redirect examination?

Mr. Freeman: Just one question.

Redirect Examination by Mr. Freeman.

Q. Mr. Johnson, why did you enter into business relationship with Larson and Precision in January or any part of 1941? That is, why did you again enter into business relationship with Precision and Larson?

A. I believe that question could probably best be answered by Mr. Daniel, who carried the negotiations and arrangements through with Larson.

Q. You signed the agreements, did you not?

A. I did, sir.

704 Q. Upon whose instructions or advice did you sign the agreements?

A. Mr. Daniel.

Q. Just what office has Mr. Daniel with your company?

A. He is assistant secretary.

Q. With respect to his duties, aside from his corporate setup, what does he do?

A. He also handles the new tools committee and new tools development and new tools brought into the line.

Mr. Freeman: That is all.

Mr. Fidler: Nothing further.

(Witness excused.)

Mr. Freeman: Mr. Alberts, please take the stand.

705 HARRY C. ALBERTS, called as a witness on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your full name?

A. Harry C. Alberts.

Q. Your residence?

A. 435 Oakdale Avenue, Glencoe.

Q. What is your profession?

A. Patent lawyer.

Q. How long have you represented Snap-On Tools Corporation?

A. Since June of 1928.

Q. Now, will you tell us when you—you were the attorney that originally filed an application for Larson which matured into a patent now owned by Automotive, is that correct?

A. That is right.

Q. And when did Mr. Larson first make contact with you with respect to filing that application?

A. The early part of September, 1938.

Q. And what brought about Mr. Larson's going to your office, if you know?

706 A. Mr. Johnson called me on the telephone and advised he was sending in a mechanic by the name of Kenneth R. Larson; that Mr. Larson had submitted a torque wrench to Snap-On which their engineering department thought was a very good wrench and they would like to handle it if I knew of any way in which Snap-On could secure itself in dealing with an individual who had no credit standing or financial backing.

Q. Then what did you do after Mr. Larson came into your office and presented to you the torque wrench which he had submitted to Snap-On?

A. He came into my office with one of his wrenches and removed a cover plate and described the details of construction to me and advised me that he had had several conferences at Kenosha with my client; that they were ready to undertake some business relationship with him if I would okeh a transaction between them.

Q. And will you identify the particular wrench or type of wrench Mr. Larson brought into your office in September, 1938?

A. One was offered in evidence here. I would like to look at the interior.

(A wrench is handed to the witness.)

707 Q. I am not interested in the details but just identify it.

A. At that time a wrench was handed to me by Mr. Larson that was similar to Defendants' Exhibit 2 with a slight modification.

Q. What did you then do after the wrench was brought into your office?

A. I told Mr. Larson that I would have to investigate the prior patents in the United States Patent Office before I would recommend to my clients that they proceed with the sale of the wrench he then submitted to me.

And I told him I was going to Washington on another matter in the course of about a week and that I would make that search and would report back to my client who, undoubtedly, in turn would contact him.

Q. And was there a business relationship set up between Larson and Snap-On shortly after you returned from Washington and made the search?

A. I would say within ten days thereafter.

Q. Were you instrumental in preparing the deal or the papers incorporating the relationship that was to exist between Snap-On and Larson?

A. The entire matter after discussion with Mr.
708 Johnson and Mr. Daniel was left up to me to see the type of deal I could arrange that would be protective of Snap-On's interest having especial regard for the fact that they customarily did not like to deal with an individual without any credit or financial standing.

Q. And did you then prepare a preliminary understanding or a preliminary agreement as between Larson and Snap-On? And I am now handing you Defendants' Exhibit No. 61, which is a typewritten copy, not an executed copy.

(Handing exhibit to witness.)

A. This is the agreement that I prepared in the presence of Mr. Larson. I submitted a copy to him and sent a copy to Snap-On Tools Corporation for their approval or comments.

Q. And as a result of you submitting a copy to Mr. Larson and likewise a copy to Mr. Johnson, the document I have in my hand, defendants' Exhibit 61, was entered into?

A. Well, not directly thereafter but within three or four weeks thereafter.

Q. And that agreement covered the relationship as between Snap-On and Larson, is that correct?

A. It did.

Q. And the relationship having been set up where
709 Larson was going to make wrenches and have them sold through Snap-On, what did you then do with respect to filing his application for letters of patent?

A. Well, provision was made in this contract whereby a patent application was to be prepared by Snap-On's attorney in the name of Larson and Larson in turn was to assign the patent application to Snap-On Tools Corporation.

Q. And why was the application to be assigned to Snap-On?

A. Well, I asked Larson if he had any tangible assets

of any kind or character or could have somebody of responsibility vouch for his conduct under this contract and he said he had no tangible assets and he didn't know who he could go to for any financial backing at that moment and the only property he had was this invention.

So, I suggested to Larson that if it was agreeable with him I thought that Snap-On would accept legal title to that patent application as security for his performance of that contract.

And, in that contract, I provided the conditions and terms under which that was to be reassigned to him.

Q. And who paid for your services as attorney in preparing the application and the government filing fee?

710 A. Well, it was also provided there in that contract that I was to bill Snap-On for those services and they in turn would deduct that from their accounts payable to Larson.

Q. And I notice in the agreement that there is a provision for defensive litigation. Will you please explain why it was necessary to include such a provision in the agreement?

Go ahead and tell us quickly the relationship as between Snap-On and Mr. Larson under his application which you were preparing and filing.

A. At the time of dictating this preliminary agreement, I set up, and so advised Larson that I would have to set up, a reserve fund to protect Snap-On Tools Corporation against two things; one was the possible institution of suit for patent infringement by third parties and the other was for indemnification in the event any court should decree damages or profits against Snap-On Tools Corporation; that the best way I knew how to do that under his financial circumstances was for Snap-On to deduct from his accounts payable a certain sum or percentage each time a bill was due him and in that way a fund would be accumulated which was to be held in a savings account in the City of Kenosha and that fund would bear interest at the then

711 prevailing rates of a savings account in that city and he agreed to that.

Q. And who owned the defense fund?

A. Well, Larson owned it. It was merely held by Snap-On as trustee.

There is also provision in this contract for the return of any amounts in the fund after a certain given time and

in the event Snap-On wasn't sued within that time or did not have a decree against them by virtue of its sale of that particular wrench.

Q. And, by that "particular wrench," you have reference to the wrench Larson was supplying to Snap-On?

A. Under this agreement, yes.

Q. Now, does Snap-On in making purchases from other companies require the setting up of any defense fund?

A. Well, they have two different ways of operating it. Most of their transactions are with firms of financial standing and I have advised them, and they have followed my recommendation in setting up a condition in their purchase orders which provides that the seller is to indemnify them in the event of a suit, not only for damages or profits, but for any expense they are subjected to.

In this case that did not apply because Larson ad-
712 mitted to me he had nothing and it was problematical with him as to whether or not he could acquire any financial backing but he thought that he could and we gave him that opportunity.

Q. At the time you prepared the agreement, he did not have the necessary funds for the preparation or filing of the application?

A. No, he did not.

Q. And you say, after preparing the agreement, Defendants' Exhibit 61, there were some three or four weeks elapsed before the actual signing of the agreement?

A. And some correspondence in connection with my client's reluctance in returning the agreement signed. They held the agreement there for some time.

Q. Were you advised as to why the agreement was held up?

A. Well, I wrote them several letters and I have them in my file.

Q. Will you just refer to them briefly?

A. Well, on September 28, 1938, I sent a transmittal letter with the preliminary agreement I had then prepared, and which appeared to be acceptable to Mr. Larson.

I asked them for their comments and, if it met with their approval, to sign it and return it to me.

713 Mr. Lindsey: You have no objection to me looking at these letters as he refers to them?

Mr. Freeman: None whatsoever.

Mr. Lindsey: I think I can shorten the cross examination a little bit, Mr. Freeman, and, if your Honor please.

The Witness: That letter was accompanied by the original and a carbon copy of the contract, this Exhibit 61. It was then signed by Mr. Larson in my office and it still required the signature of Snap-On Tools Corporation to consummate that written understanding.

Mr. Freeman: Q. Can you tell us why Snap-On delayed the delivery of the agreement back to you so it could be given to Mr. Larson?

A. Well, I had best refer to the correspondence.

Q. You go right ahead. Refer to the correspondence you have, all of which is available to Mr. Lindsey.

A. On October 4, 1938, I wrote Snap-On Tools, attention Mr. Johnson, telling them that:

"Mr. Larson called me today and asked whether or not I had heard from you in connection with the submitted contract."

I would prefer you would read that letter if you wish.

714 Mr. Freeman: I am now reading a letter of October 4, 1938 to Snap-On Tools Corporation, Kenosha, Wisconsin, attention Mr. Joseph Johnson, Vice-president

"Re: Torque Wrench—Kenneth R. Larson, File 11354.

"Dear Joe:

"Mr. Larson called me today and asked whether or not I had heard from you in connection with the submitted contract. I informed him that I did not and he then advised that you promised to call me on the telephone or get together at the earliest opportunity in connection with the submitted contract.

"If you have any further questions or desire more information in connection therewith, I certainly shall be pleased to either arrange for a conference at your office or have you call me on the telephone or write at your leisure.

"Thanking you for giving the matter any attention that you deem necessary for the moment, I remain

"Yours very truly,"

The Witness: On October 5, 1938, or shortly thereafter, I received a letter from Mr. Johnson of Snap-On Tools, dated October 5, 1938, which I hand you.

715 (Handing letter to counsel)

Mr. Freeman: And I now read a letter from Snap-On Tools, dated October 5, 1938 to Harry C. Alberts:

"Harry C. Alberts,
First National Bank Building,
Chicago, Illinois.

Dear Harry:

"Re: Torque Wrench—K. R. Larson, File 11354.

"Yesterday, I wrote Mr. Larson to the effect that we were now ready to discuss this matter further and asked him to come to Kenosha tomorrow, October 6th.

"After Mr. Larson has called, I shall let you know what further action should be taken.

"Best regards,

"Yours very truly,
"Snap-On Tools Corporation,"
(Signed) "J. Johnson,
"*Vice-President & Treasurer.*"

The Witness: I replied to that letter under date of October 7, 1938, and also—

Mr. Freeman: Mr. Alberts, I think we can save some time if you would just give us—you know what is in
716 that correspondence—quickly why there was a delay in executing the agreement, and then make available to Mr. Lindsey here any of the letters you have so he can have them for examination.

The Witness: The following day I received another letter from Mr. Johnson giving me the reasons why that contract wasn't signed by Snap-On Tools Corporation.

I would have to read the letter to give you all the details which he had given to me.

Mr. Freeman: Under those circumstances, I will read the letter you have now handed me, which is a letter dated October 6, 1938:

"Kenosha, Wisconsin,
October 6, 1938.

"Mr. Harry C. Alberts,
First National Bank Building,
Chicago, Illinois.

Dear Harry:

"Re: Torque Wrench—File 11354.

"Kenneth R. Larson, of Des Plaines, Illinois, was in the office this morning, and preliminary steps were taken toward getting him into a position hereby he will be able to function as our supplying source of Tension
717 Wrenches. As you know, he is an individual operator without a plant and with very limited financial re-

sources. So, naturally, our first interest and consideration is in seeing that he is established upon a substantial basis. Some plans we have in mind will accomplish the results we are after; however, in the meantime, it is necessary for him to gather certain essential material for us upon which to base any financial assistance given to him, either personally or otherwise.

"In view of the importance of the interim data which has such an important bearing upon whether or not Larson is going to be a successful source of supply for us, we have refrained from executing the preliminary contract or understanding that was sent to us with your letter of the 28th. He has already signed both the original and duplicate copies, and whether or not we will execute them depends upon his ability to service us. Once we are satisfied that everything is in good order, we will get in touch with you and supply all of the details in connection with the matter.

"In the meantime, since we have Larson's signature to the preliminary agreement, I see no reason why we cannot hold off signing for another several weeks until we 718 are more certain of our grounds and we believe you will agree that this is a conservative and safe premise upon which to work.

"Best regards.

"Yours very truly,
"Snap-On Tools Corporation,"
(Signed) "J. Johnson,
"*Vice-president & Treasurer.*"

The Witness: When I received that letter, I thought certain things were troubling Mr. Johnson, that he didn't quite fully understand the measures I had taken in the contract to protect Snap-On Tools Corporation, so, I answered that letter under date of October 7, 1938, which I hand you.

(Handing letter to counsel.)

Mr. Freeman: I am now reading a copy of a letter from Mr. Alberts to Snap-On Tools Corporation, dated October 7, 1938:

"Snap-On Tools Corporation,
Kenosha, Wisconsin.

"Attention Mr. Joseph Johnson, Vice Pres.

"Dear Joe:

"Re: Torque Wrench—File 11354.

"I have your letter of October 6, 1938 relative to

719 the above matter and wish to emphasize the fact that I did not intend to rush this matter through your office as there is no hurry except as to placing you in a position of procuring wrenches as and when such are required. It was not understood by me that you were going to help finance this source of supply and Mr. Larson repeatedly stated that he was in a position to fulfill the terms of the contract.

"I am wondering whether or not you have observed the condition in the preliminary contract that in the event Larson finds he is unable at any time to furnish wrenches to meet your requirements and specifications, you have the right to acquire these elsewhere or engage in the manufacture thereof in your own plant by paying a 5% royalty based upon your price to your branches.

"We have the assignment of the patent application as security for the patent expense and for any other requirements set forth in the contract. There is only one reason for executing the contract at this time and that is to preclude the possibility of Mr. Larson withdrawing the proposition. He would have the right to withdraw at any time prior to your actual signing of the contract and your
720 delivery of a copy of the contract duly executed to him.

Other than this possibility, there is no real hurry to execute the preliminary understanding.

"With kindest personal regards, I remain

"Yours very truly."

The Witness: After that I had telephone conversations with both Mr. Daniel and Mr. Johnson about that contract. The thought occurred to Mr. Johnson that there is nothing to convince him that a mechanic like Larson couldn't have come from the Automotive Maintenance Machinery Co. and, although he denied that, what assurance did we have that he was an independent contractor without any connections with any competitor of Snap-On Tools Corporation?

Previous to that, in my opinion on the patent situation, after my search in the Patent Office, I advised Mr. Johnson that from my search, the Snap-On Tools Corporation was free to enter into some arrangement with Mr. Larson but I wanted them to be sure not to do so unless it was very clear and plain that Mr. Larson had no connection either with Automotive or with any other competitor of Snap-On Tools Corporation.

And then Mr. Daniel replied by saying over the telephone that that is one of the things that had been worrying them.

721 So, I called Mr. Larson in and told him the circumstances and advised him in a very emphatic manner that Snap-On would not be interested under any circumstances if he had any past, present or future connections with any competitor of Snap-On Tools Corporation and also Automotive Maintenance Machinery Co., and I required him to sign an affidavit to that effect in my office, of which a copy was retained in my file and the carbon went to Snap-On Tools Corporation.

Mr. Freeman: Q. And that affidavit is now in evidence as Plaintiff's Exhibit 8-A?

A. That is right.

Mr. Lindsey: May I see the letter that is attached?

The Witness: Surely, this is the letter underneath there (handing documents to Mr. Lindsey).

Mr. Freeman: Q. Now, Mr. Alberts, were you advised that Snap-On had given an order to Kenneth R. Larson under date of October 26, 1936?

And I am now handing you Plaintiff's Exhibit 4. I am using, of course, photostatic copies.

(Handing exhibit to witness.)

A. I did not get a copy of this from Snap-On Tools Corporation but Mr. Larson called me up and said he
722 received a copy of the contract properly executed and had an order and they were under way.

Q. And thereafter you continued to prosecute the Larson application?

A. That is right.

Q. And you were paid for that Larson application by Snap-On out of funds that were accumulated or to be accumulated that ultimately would go to Mr. Larson, is that correct?

A. That is right.

Q. Now, when did you first learn of the possibility of an Interference in the Patent Office?

A. Well, under date of August 12, 1939, I received a notice from the Commissioner of Patents setting forth that they wanted a statement from the applicant Larson as to his date of conception, that there was a possibility of an Interference with a senior party and asked me to submit a statement under Rule 93.

Q. And upon receiving the request from the Patent Office that you file a statement or, rather, Larson file a statement under Rule 93, what did you then do or have Mr. Larson do?

A. I wrote a letter under date of August 15, 1939, to Snap-On Tools Corporation and sent a copy to Mr.
723 Kenneth R. Larson. I have that letter here.

(Handing letter to counsel.)

Mr. Freeman: And I am now reading a letter from Mr. Alberts to Snap-On Tools Corporation with a copy to Mr. Kenneth R. Larson:

"August 15, 1939.

"Snap-On Tools Corporation,
Kenosha, Wisconsin.

"Atten: Mr. W. W. Daniel, Asst. Secretary.

"Dear Mr. Daniel:

"Re: Torque Wrench—Kenneth R. Larson, File 11354.

"This will advise that the Patent Office has asked for a statement under oath in the above entitled matter as to Mr. Larson's earliest date of conception with a view of declaring an interference in the United States Patent Office. This would mean that someone else has an application on file covering substantially the same type of structure.

"For your information, practically all the claims of the Larson patent application have been allowed in response to the last amendment.

"Because the Commissioner of Patents is asking Mr. Larson for a statement under oath as to his date of
724 conception, this would indicate that Larson was the last to file and that the other application was filed prior to his.

"I ask, therefore, that you have Mr. Larson consult with the writer at his earliest convenience and, thereupon, a statement will be prepared for his signature. His records and sketches should be presented at the time of the conference.

"With kindest regards, I remain

"Yours very truly."

Mr. Freeman: Q. And after that did Mr. Larson confer with you with respect to making a statement under oath in accordance with the request by the Commissioner?

A. He did.

Q. And tell us briefly what you did when Mr. Larson

gave you his dates, that is, what sort of check-up did you make as counsel for Mr. Larson?

A. He gave me a date of conception of July 1, 1934 and that he had made full size wood patterns on July 15, 1934, which was about four and one-half years before his filing date.

I advised Mr. Larson that while I wasn't questioning his dates, the length of time that elapsed between his
725 conception and his filing was such that I would not be free to set forth such an early date unless he submitted something tangible in the way of evidence and that I could be reasonably sure he could prove those dates.

Q. What was submitted or what was done at that time?

A. I saw the patterns around here on a board. These patterns were brought down by Mr. Larson. They were not then on a board but he had them with him.

(Patterns handed to witness.)

Mr. Freeman: The witness has in his hand Defendants' Exhibit 7.

The Witness: And he had told me he made these himself in 1934 and that he had ordered castings from these patterns from a Mr. Schultz of the Ravenswood Foundry Company, and I asked him to bring down the invoices from the Ravenswood Foundry Company.

He called me up and said he couldn't find them.

I said, "Well, you go to the foundry and get copies of them or bring down their records."

He called me back and said, "They have found the records but they will not release them to me," and
726 that he didn't know how he could furnish the evidence I asked for because they belonged, the records belonged to somebody else over whom he had no control.

So, I called up Mr. Schultz—

Mr. Freeman: Q. Of the Ravenswood Foundry?

A. Of the Ravenswood Foundry. (Continuing)—and told him who I was and that I was representing Snap-On Tools Corporation and I was also handling the patent application for Kenneth R. Larson and a matter has come up that required some evidence which Larson said he was in possession of, and I asked him if I could see his records.

He says, "Sure, come down."

I said it wouldn't be very convenient for me to get to his foundry and if he was ever in the loop, couldn't he bring them down or give them to Mr. Larson. I told him Mr.

Larson was in and out at that time and he could certainly bring them to me and take them back.

He said he would not release the records to Mr. Larson. I said, "Well, I still want to see those records. When will you be in the loop next?"

He said, "Well, I come down to the loop occasionally."

I said, "Will you be in the loop in the next week?"

727 He said he thought he would be, and I said, "Bring them down then."

And he did come to my office within several days and at that time he brought to me some sales books that are in evidence here. They were presented in the Interference.

728 Q. They are not in evidence here, they were in evidence in the Interference?

A. In evidence in the Interference; I saw them here, however.

Q. After these books were brought down by Mr. Schultz, what did you then do with respect to filing a statement on behalf of Larson under Rule 93?

A. Well, I had a discussion with Mr. Schultz first; I showed him the wrench that Mr. Larson had left; I showed him the patent drawings and I asked him if the sales sheet perhaps covered patents that related to that wrench; he said yes, they did. I asked him under what circumstances did you see these wrenches; and he said, "Well, Larson was buying castings from me right along; and at one time Larson brought over a wrench like that, and they were the castings that we had previously supplied." I asked him if he would so state under oath in the Interference, and he said he would be glad to.

Q. And thereafter in due course an Interference was set up in the Patent Office.

A. I prepared that statement under Rule 93, had Mr. Larson sign it, and sent it in to the Patent Office; and following that, on August 31—

729 Mr. Lindsey: May I see that affidavit, please?

A. Yes; that is part of my file—August 31, 1939 the Patent Office sent to me what is termed an official action preparatory to declaration of an Interference. They asked me to make three claims—

Mr. Freeman: Q. Mr. Alberts, I think we can save a little time, and especially that the Patent Application is now owned by Automotive and they have access to the en

tire file,—can you tell us whether or not in due course an Interference was set up involving Larson as one party and Zimmerman as another party?

A. October, 1939, an Interference 77565 was declared by the United States Patent Office.

Q. In accordance with the usual practice in Interferences, Larson then filed a preliminary statement?

A. That is right.

Q. And will you give us quickly what he set up for his date of invention?

A. Mr. Larson set up—May 20, 1936 he first made drawings of the invention; September 20, 1938 he first made a written description of the invention; that on or about the 12th day of September, 1934, he first explained the invention to others; and that the date of the first act or acts, other than the acts herein specified, which if proven 730 would establish conception of the invention, and a brief description of such act or acts are the making of pattern on it July 15, 1934; and that on the 10th day of September, 1934, the said device was first successfully used and operated in the city of Des Plaines, County of Cook, State of Illinois.

Q. And that was filed as a sworn statement by Mr. Larson?

A. That is right.

Q. And again, give us quickly what took places as between Larson and Zimmerman in the Patent Office following the filing of the Preliminary Statement; were there any amendments or motions made by either party?—Just give them to us quickly, so we have the general picture.

A. Zimmerman filed a motion to add counts; and they accompanied that with a memorandum in support of that motion. I filed a reply memorandum, and also moved to dissolve—and also opposed the counts on the ground that they were not obtainable through priority.

Q. And that preliminary sparring with respect to the filing of motions and amendments in the Patent Office which was filed by Mr. Fidler, how long a period of time did such sparring go on?

A. I have to look at the date of the decision on the motion. It was set for hearing February 21, 1940. Time 731 for briefs was given to both sides. March 11, 1940, the Patent Office rendered a decision thereon.

Q. And following that, there was an amended Pre-

liminary Statement, or rather a second Preliminary Statement filed by Larson, in accordance with the reformed Interference?

A. That is right.

Q. And when was that filed?

A. June 14, 1940, the Patent Office reformed that Interference into new counts which involved a substitution of certain claims pursuant to the decision of the Patent Office.

Q. And new dates for the taking of testimony were set up on September 18, 1940; is that correct?

A. That is right.

Q. So that there was some eight or nine months elapsed after the declaration of the Interference at the outset and the time for taking testimony?

A. That is right.

Q. How did you get these Preliminary Statements signed; that is, where did you get the dates which were used by Larson in his Preliminary Statement?

A. Well, I followed the usual procedure I have always followed in my office; I had my stenographer prepare a
732 blank Preliminary Statement, including therein, in accordance with the form prescribed by the Patent Office, except the dates. I sent such a copy to Mr. Larson and told him that he should fill in the earliest dates that he could possibly prove; that I wanted only such dates that he could prove.

Q. And did those dates correspond with the preliminary information that Larson had given you in connection with the filing of the informal statement under Rule 93?

A. That is right.—I do not have a work sheet on the Preliminary Statement in my file.

Q. Tell us now quickly, Larson being the junior party, or having to put on his proofs first, what took place, or what happened with respect to Larson putting in his proofs?

A. I advised Mr. Larson what was required by the Patent Office in proceedings of this type to establish a priority at the instance of a junior party. I told him that the burden of proof was on him, because he had filed last; that he would have to testify in his own behalf, and have corroborating witnesses, more than two, or at least two; that he would have to have an abundance of documentary

evidence to substantiate and corroborate the verbal testimony of the witnesses.

733 Q. And were you compelled to get any extensions of time in connection with the taking of Larson's testimony?

A. I was.

Q. And of course, you got the extensions from Mr. Fidler?

A. I got several short extensions from Mr. Fidler.

Q. Did you ever advise Mr. Daniel of Snap-On as to any troubles that you were having in getting Mr. Larson to come in with his proofs?

A. I wrote several letters to Larson to come in with his proofs and his witnesses; and he called each time—I wrote him under date of October 28, 1939, and September 5, 1940, to come in and discuss the matter; we had to get ready.

Q. When you say you wrote him, whom do you have reference to?

A. Mr. Larson.

Q. Did you send copies of those letters to anyone at Snap-On?

A. The notes here do not indicate that I have on two occasions—

Mr. Freeman: If you would like to see those letters, Mr. Lindsey,—

Mr. Lindsey: I can look them over now, and save a

734 little time.

Mr. Freeman: Q. Did you ever advise Mr. Daniel, or any one at Snap-On, asking them for assistance in getting Mr. Larson in with his proofs and his witnesses?

A. I called Daniel several times; and under date of September 13, 1940, I so wrote him, that I was having difficulty with Mr. Larson, and that he had better get after them to come in and not only protect Mr. Larson's interests but the interests of the Snap-On, that they acquired under their contract.

Mr. Freeman: I would like to read the letter referred to by the witness Alberts: Dated September 13, 1940, addressed to Snap-On Tools Corporation, W. W. Daniel, Assistant Secertary. Re Larson vs. Zimmerman—File 11484. Interference No. 77565.

"Dear Walt: I have been unable to get Mr. Larson to confer with me so that a deposition could be taken in the

above entitled case before September 18, 1940. I have re-examined the entire case with a view of preparing myself to question Mr. Larson, his business associates and such other witnesses that they may have available to establish their case.

"It is now too late to hold the deposition on or before September 18, 1940 and on that account I was compelled to seek an extension of fifteen days. This extension was forthcoming with some difficulty, and I am certain we cannot get any additional extension.

"Therefore you had better contact Mr. Larson and ask them why they have not cooperated. It is just as expensive to permit me to go ahead and prepare for the taking of the deposition and then not proceed therewith as it is to go through with the deposition.

"I would appreciate a copy of your letter to Mr. Larson.

"With kindest regard, I remain, Yours very truly, Harry C. Alberts."

The Witness: Under date of September 16, 1940, Mr. Daniel replied to my letter.

Mr. Freeman: And I now read the letter from Daniel of Snap-On to Harry C. Alberts, dated September 16, 1940, First National Bank Building, Chicago:

"Dear Harry: Re Larson vs. Zimmerman, File 11474, Interference No. 77565. We have your letter of September 13th with regard to the difficulty getting Mr. Larson to confer with you on the deposition; and this matter was discussed today, Saturday, with Mr. Johnson.

"We are calling Mr. Larson into the office for a conference on Tuesday morning, September 17th, and shall reach a definite understanding with him at that time regarding this matter. We are not sending you a copy of a letter to Mr. Larson, as we shall call him up and ask him to go in for a conference.

"With best regards, Yours very truly, Snap-On Tools Corporation, by W. W. Daniel, Assistant Secretary."

Q. Now, you finally had Mr. Larson come in; is that correct?

The Witness: A. "He finally came in and told me that his two main, important witnesses, Mr. Whitaker and Mr. Nyhes were in Arkansas on another matter, not pertaining to his business; and they could not possibly be back, and I had better get another extension; which I attempted

to do. And I communicated with Mr. Fidler, and he granted a short extension for that purpose.

Q. And when was a notice of taking testimony served on Mr. Fidler; give us the date when the deposition on behalf of Larson was to be taken.

A. I have a notice right here.

737 Q. Can you just give us the date for which testimony was set?

A. I served notice that I would take the testimony of the specified witnesses on October 24, 1940.

Q. And was their testimony taken on October 24, 1940?

A. The day before October 24th, Whitaker and Hymes came in, and I started taking the deposition the following day.

Q. That is, they came in a day before and talked to you?

A. That is right.

Q. Then over a period of how long were the Larson depositions taken?

A. I expected to complete them in two days; and they took about five days.

Q. And those depositions were taken by a reporter by the name of Raftery?

A. That is right.

Q. Now after the taking of the depositions in behalf of Larson; tell us quickly what took place.

A. Well, Mr. Fidler went into very extensive cross-examination of all of the witnesses, and primarily Mr. Larson and Carlsen; and the time was going on and on endlessly; he was going into what I considered then a fishing expedition, not pertinent or germane to the Interfer-

738 ence; and I halted the deposition and instructed the witnesses not to answer certain questions as to who their stockholders were.

Mr. Fidler certified the questions to Judge Barnes and this Court; and Judge Barnes denied their motion of certification.

Q. In other words, your witnesses did not have to answer?

A. That is right.

Q. Then, after the denial by Judge Barnes, was there any further testimony taken?

A. There was some testimony taken; I think Mr. Larson was not quite finished then, and they continued to complete his testimony.

Q. That is, when you say they completed,—was that cross-examination?

A. Mr. Fidler completed his cross-examination. He was the last witness in his own behalf.

Q. Now, after completing the taking of the testimony, when did you next hear from Mr. Fidler, and in what connection?

A. November 20th, the morning of that day, of 1940, Mr. Fidler called me and said that he had certain infor-
739 mation which would be of interest to me in connection with the Interference, and would I come over to talk over the matter with them. I replied by saying I would be glad to, and asked him when it would be convenient for him to see me. And we agreed upon 1:30 p. m. of that day; and I went over there at that time.

Q. And tell us now, with as much detail as you can, what took place when you conferred with Mr. Fidler on the 20th of November, 1940, at his office.

A. Well, after the usual greetings he told me that as a matter of professional courtesy he wanted me to know certain facts about the deposition that was taken on behalf of Larson; that he had a large affidavit in his possession, which he pointed out, that proved beyond a doubt that Larson was committing perjury, and certain witnesses on behalf of Larson. They knew that I could not have known anything about it, by virtue of my conduct in the deposition and throughout the deposition; and would I like to hear what he had.

I said I certainly would be glad to hear what he had. He then told me that he was not at liberty to let me have the affidavit which was in his possession, and which he skimmed through the pages and fanned them out; and I saw
740 the notarial seal on a good many of the pages; and I estimated then there was about one hundred pages of that affidavit; but he would give me the highlights of what was therein contained.

Q. And did he then on November 20, 1940, give you the highlights of the affidavit?

A. He proceeded to give me summary statements of what was in that affidavit, and that Thomasma subscribed to that affidavit; and had enough explained just what Thomasma had to say about particular exhibits in the Interference and about certain details, which I knew that

nobody besides Larson and anybody associated with him would know.

And I told him I was quite surprised, and I certainly am being put in a very embarrassing position here by Larson; and that I wanted to check further. But at that time he gave me, or handed me, a drawing which he said that Mr. Thomasma had prepared, that had no bearing on the structure in the Interference; but he merely wanted to show it to me so that I could compare it with Exhibit 27 in the Interference. Exhibit 27 was that large drawing which is in evidence in thise case.

Q. As Defendants' Exhibit No. 9.

A. He pointed out to me numeral characters and
741 the printing on that drawing, which he then told me was a sketch of an abrasive chuck, but that it had no bearing on what I was there for, except to see how similar the characters were on that drawing with those in Exhibit 27.

I made an examination; I told him that I was convinced they were made by the same parties, and it looked very much like Larson had given false testimony; and I would appreciate it if he would have Mr. Thomasma available at some future time; I wanted to question—I wanted to call in Mr. Johnson and have him hear directly from Mr. Thomasma just what he had to say about Larson, and the testimony given on behalf of Larson.

Q. I hand you Defendants' Exhibit No. 22, which is a drawing; and will ask you to examine it and tell us whether or not that is a photostat of the drawing which was presented to you by Mr. Fidler on November 20, 1940.

A. That does not look like that particular drawing; but it was one very much like it in appearance. If I could see the original, my recollection would be better on it.

Mr. Freeman: May we have the original?—Mr. Fidler, you have never been able to find this other drawing? There was some other drawing that was presented to you by Mr. Thomasma for purposes of comparison; am I right in that?

742 Mr. Fidler: Mr. Thomasma had at various times presented me with drawings.

Mr. Freeman: Q. Look at the original here.

The Witness: A. Well, this is not the drawing.

Q. Well, was there a drawing presented to you there

on November 20th by Mr. Fidler, which he told you was made by Mr. Thomasma?

A. There was.

Q. And did he tell you why he was giving you that Thomasma made drawing?

A. Yes, he did.

Q. And what did he say?

A. He told me that he wanted me to come to a conclusion as to whether or not Thomasma's statement was correct, with respect to Exhibit 27, and that he thought that to convince me that Thomasma's statement with respect to Exhibit 27 was correct, and that Larson's was false. And I looked at both very carefully, and came to the same conclusion, that they looked like they were made by the same person.

Q. And Mr. Fidler definitely told you that the drawing he was handing you for the purpose of comparison was a Thomasma made drawing?

743 A. That is right.

Mr. Lindsey: I object; let the witness testify.

Mr. Freeman: Q. Tell us what he told you.

The Witness: A. He said here I have a drawing, the structure of which has nothing to do with this Interference we are talking about; I am merely giving it to you so that you can look at it and examine it with and compare it with Exhibit 27; if you can come to some conclusion as to the characters and likeness of the characters between the two drawings. And I examined both.

Q. And did you make any comment, after making an examination of these two drawings?

A. I told Mr. Fidler it certainly looked like they were made by the same person; and that undoubtedly Mr. Larson did not make; or have some high school boy make that Exhibit 27.

Q. And after having had the information conveyed to you, that you now testified about, what arrangements did you make for meeting Mr. Fidler further?

A. I told Mr. Fidler that I would like to call Mr. Johnson on the telephone that day and make an appointment for a conference at his office, if he would have Mr. Thomasma available for questioning. I wanted Mr. John-

744 son to hear his statements directly; I wanted Mr. Johnson to be able to come to his own, independent

conclusion with respect to Snap-On's future relations with Larson. And he said he would be very glad to.

And I returned to my office; I called Mr. Johnson, I told him in a general way what had happened. He said that he was leaving town in several days, and that he thought he would be back by November 28th; he would be back in Chicago on November 28, 1940. And I asked him if he was reasonably sure he would be back that day, and he said that he thought he would be.

I called Mr. Fidler either that same afternoon or the next morning and told him my conversation with Mr. Johnson, if November 28th was convenient that we would tentatively set it for that date; and if there was any new occurrences in the meantime, that I would get in touch with him. And I asked him if he would hold the whole matter in abeyance for that week; and he promised me that he would.

Q. And then on November 28th you met Mr. Joe Johnson, who testified here this morning?

A. I called the Chicago branch office of Snap-On Tools Corporation, and asked them if they expected Mr. Johnson that morning. That was the information the Ken-
745 osha office gave me. Mr. Edwards of that office told me that he was going to meet him at the train; and I told him to be sure to bring him over, which he did.

Q. And when did you meet Mr. Johnson?

A. He came in shortly before the conference. He came into my office shortly before the conference was scheduled at Mr. Fidler's office. I think the time for that conference was 10:30 in the morning.

Q. Did you have any discussion with Mr. Johnson in your office prior to going over to Mr. Fidler's office?

A. I did not; he asked me, and I said, according to your own instructions,—you said I shouldn't; and I did not.

Q. And you then went over to Mr. Fidler's office?

A. That is right.

Q. Now tell us just what took place when you and Mr. Johnson entered the offices of Davis, Lindsey, Smith & Shonts?

A. Well, we arrived there about 10:30 in the morning. I asked the telephone girl if Mr. Fidler was in, that we had an appointment with him. She said that he was in, that we should be seated. We sat down and waited
746 there for about twenty minutes. Mr. Wacker and Mr. Allen entered the outer door and walked past us. Mr.

Johnson said how do you do to them, and they didn't even reply to his announcement, and walked directly into the private offices. And soon thereafter we were called in.

Q. Now, tell us, when you were called into Mr. Fidler's private office, just what took place.

A. We all shokk hands, and everybody was there that I understood would be there, except Mr. Thomasma. And we all were seated, and Mr. Fidler made a statement to me that he was proceeding on the basis that Snap-On was Precision and Precision was Snap-On, and only under those conditions or under that understanding would he give us the information directly from Mr. Thomasma, whom he had in another office, or could be produced.

Q. What did you say?

A. I said we were here in behalf of Snap-On Tools Corporation, and Snap-On Tools Corporation alone; under no circumstances would I subscribe to that misunderstanding; that that was not true, that never has been true and it was not true now. And I certainly would not even want to continue further under those conditions.

Q. And then what happened?

747 A. Well, Mr. Fidler was quite shocked that I took that position as abruptly as I had taken it. And he said, "Well, Snap-On's hands are not too clean in this matter either." And then Mr. Johnson replied by saying that Snap-On's hands were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane. And for a moment nothing was said by anybody. Finally Mr. Fidler said to Mr. Wacker, "What shall we do about it?" Or, "What do you think we should do?" Mr. Wacker replied and said, "Well, it is up to you." And Mr. Fidler said, "Well, you are here now. I told you I would get you the information first hand. I have Mr. Thomasma here. We might as well go ahead with the conference." And we then proceeded. He called in Mr. Thomasma.

Q. That is George B. Thomasma?

A. George B. Thomasma. He was introduced to Mr. Johnson, and he was introduced to me. We shook hands, that was the first time I had seen him. Mr. Johnson remarked to me after we sat down that that is the first time he had seen him. Mr. Fidler asked me if I wanted to ask the questions, and I said, "Well, you go ahead; you are

748 more familiar with what you want to produce than I am. You ask him the questions, and if I have any-

thing to add I will ask permission later on to direct some questions to him."

And Mr. Fidler proceeded to ask him questions in a very formal way, that approximated the conduct of a deposition, except that Mr. Thomasma was not sworn, of course. He went into the details surrounding the evidence that was presented in the Interference. And that went on for quite some time. And then Mr. Thomasma again stated, or corroborated that Mr. Fidler had—what Mr. Fidler had told me the previous week.

Q. November 20th, 1940?

A. That is right; that he had made that drawing. And I asked him to identify it. He described the paper it was written on, I mean drawn on. He told me, or told us, rather, that had had made it on a Sunday afternoon, when his brother, I think it was John Thomasma, was present; that that afternoon they had sent their wives to the movies, and he worked on the drawing; and his brother was right there with him, and would prove that he made the drawing at that time.

He also went into his past connection with Automo- 749 tive Maintenance Machinery Company.

Q. That is whose connection with Automotive Maintenance Machinery Company?

A. George Thomasma's connection; and about his resignation being requested by Mr. Wacker, and how he had met Mr. Larson, the year he had met him, the circumstances under which he had met him. He gave me such details that convinced me that he knew more about this Interference than I had known while I was conducting the deposition. I was convinced then that Thomasma was telling the facts accurately, and that apparently Larson was not telling the true story.

Q. And about how long did that examination or questioning by Mr. Fidler, of Mr. Thomasma, take place?

A. I assume that it took about an hour and a quarter, before it was completed.

Q. Did you ask Mr. Thomasma any questions?

A. When Mr. Fidler said that he was through, and asked me if I had any questions, I said I had a few questions; and he said go ahead. So I examined Thomasma on what he had known about Snap-On Tools Corporation, and about myself; if he was the inventor of this, why didn't he come in to see me. He replied by saying that Larson

and Carlsen refused to allow him to come and see me;
750 that he wanted to come and see me, but they absolutely prohibited him from coming to see me.

I asked him if he had gone to Snap-On Tools Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked if he had met Mr. Joe Johnson then; he said no. I asked him if he had met me before, and he said no, he did not. I asked him why he did not come to see me, if he was the inventor he should have told me about this invention, and I could then have prepared the application in his name, if he was the inventor; that was the proper way of doing. He said that Larson and Carlsen insisted if I knew that any ex-employee of Precision was connected with the Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision.

Q. Then what did you say, or what took place after you were through examining Mr. Thomasma?

A. Well, we got our coats and hats; we stood up and were about to leave, when I made the statement to Mr.
751 Fidler that under all of the circumstances that were presented to me at that meeting, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; that they would use their influence on Larson to see that that was done; that I saw no other way out of it.

Q. And why would it be necessary for Snap-On to acquiesce in a concession of priority from Larson to Zimmerman?

A. Snap-On was the legal title holder of record in the Patent Office, and they would not accept a concession of priority by Larson without our consent or the consent of Snap-On.

Q. And Snap-On was the legal title holder, in accordance with that agreement that you referred to?

A. Preliminary agreement.

Q. Exhibit 61?

A. That is right.

Q. And had Zimmerman prevailed in the Interference by his proofs, would he have gotten any more than what

you were willing to give and recommend at that time that Snap-On give to Zimmerman?

Mr. Lindsey: I object to the question; that is putting words in the mouth of the witness.

752 Mr. Freeman: This man is a lawyer, your Honor; I don't need to lead him.

Mr. Lindsey: He didn't testify that he was willing to give—

Mr. Freeman: He has made the statement here he would recommend a concession of priority.

Mr. Lindsey: He said nothing about giving a concession of priority.

Mr. Freeman: Q. Tell us now what, exactly, you told Mr. Fidler you would be willing to do.

The Witness: A. I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority, and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do.

Q. And I now ask you, had Snap-On followed your recommendation, and had Larson conceded priority to Zimmerman, would Zimmerman have got everything that he would have got had he prevailed in the Interference?

A. That is precisely what they would award to Zimmerman, had he won on the merits.

Q. And you made that statement to whom?

A. Mr. Fidler.

753 Q. On what date?

A. November 28, 1940, a few minutes before we left the conference.

Q. And what did Mr. Fidler say to you when you made that proposal, or stated that you would make a recommendation of that kind?

A. Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over five thousand dollars investigating Larson and his associates; that a concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and settled promptly, or else Mr. Wacker would instruct him to unleash the dogs. And he continued by saying that he had already talked to the Patent Office officials, and that if Mr. Wacker was compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense,

that he certainly would have to go to the District Attorney with this matter.

Q. Was there any mention as to why Mr. Wacker would have to go to Hartford?

A. Mr. Zimmerman was then residing at Hartford. During the discussion they told us that Zimmerman no longer was with Automotive Maintenance Machinery Company, and that he was then living in Connecticut. And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman, as an engineer; with which we were not of course interested.

Q. And what happened after Mr. Fidler made the statement to you that concession would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?

A. Well, I couldn't say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation; from there on I was representing Snap-On Tools Corporation, and Snap-On Tools Corporation alone; and Mr. Larson would have to get another attorney, and he would undoubtedly hear from his attorney.

Q. And you and Joe Johnson then left the meeting?

A. Then left the meeting, and returned to my office. It was then about 1:00 o'clock, and I called Mr. Larson immediately.

The Court: Take a recess for about ten minutes.

(A short recess was taken.)

Mr. Freeman: Q. You and Joe Johnson returned to your office?

A. That is right.

Q. And then what did you do?

A. I told Mr. Johnson that I was going to call Mr. Larson at once, and when I arrived at my office I called Mr. Larson. He answered the telephone and I told him Mr. Johnson was here and that both of us would like to talk to him, and also for him to bring Mr. Carlsen along. He replied by saying that he couldn't just get away that moment, that he had other important things to do that needed attention, that Snap-On wanted wrenches, and he had to work there for at least several hours. Well, I told him that this was a very important matter and he had better

get down there and get down to my office fast with Mr. Carlsen, and he said, "All right, I'll be down."

He came in about forty minutes. In the meantime Mr. Johnson and I had a discussion between ourselves. I told Mr. Johnson he had better look for another source for torque wrenches, they had better start doing that immediately, and that I was convinced that Larson was falsifying his entire case and that I would know when they got down there. We waited.

Mr. Larson came in with Mr. Carlsen. I asked them
756 to sit down. They both did. I told them that I had been over to Mr. Fidler's office with Mr. Johnson that morning, and Mr. Thomasma was there, George Thomasma, and that Mr. Wacker was there, and Mr. Allen, and that that meeting was held by pre-arrangement of last week with Mr. Fidler, and that Mr. Fidler examined Mr. Thomasma at great length as to his part in the development of the wrench he was then selling to Snap-On as his own invention, and that I knew all about Exhibit 27, I had it there, and I showed it to him.

Thomasma went into great length to convince me that he was the author of that drawing, and not Larson, and that a high school boy did not make that drawing and that Thomasma made it on Sunday afternoon at his request, and that his brother was ready to prove that he was there while it was being made.

Q. Whose brother?

A. Mr. Thomasma's brother.

I said, "Frankly, Mr. Larson, I am satisfied that there is something wrong with your case and with your testimony. Now, how about it?"

Well, he turned red and was fidgeting in his chair there, and he refused to answer for a moment, and I again repeated, "How about it?"

757 He said, "I won't say yes and I won't say no," and he sat there mute, just like that.

I said, "That is a very unsatisfactory answer; I want to know. I have dealt fairly with you up to now. It is true I am the attorney for Snap-On Tools Corporation. I don't think you can say I have taken advantage of you or your position, and I am being placed in a very embarrassing position here by virtue of what has been going on, and I propose to find out today and find out at once."

He then repeated again, "I won't say yes and I won't say no."

About that time I got a bit impatient, and I told him that as far as I am concerned I will take that for a Yes, but he has got to say yes or no before he leaves that office. I then explained why it was so necessary for Snap-On to know and for him to know just where he stood if his answer was No and where he stood if his answer was Yes, that as far as I am concerned he didn't have to answer but Snap-On had a right to know, and they had a right to know where they were going from there on.

I said, "If your answer is Yes, it is just you had better get another lawyer and get him fast, because you are
758 going to need one, and if your answer is No, I don't see why you can't continue with the Interference, that as far as I can see the testimony given by you in your behalf will establish priority if the testimony was accurate and if it was honest," that the dates established through him and by his corroborating witnesses and by the documentary evidence was prior to the dates set forth in the Zimmerman Preliminary Statement, and that there was every reasonable assurance that he would receive the award of priority if his testimony and evidence in that proceeding was true, and I told him that I wanted to know, that it was his obligation to tell me, that he had better tell me.

And he said, "Well, I think it is about time we had our own lawyer in this case anyway."

I said, "That is all right with me. Whom do you want to have?"

And he said, "Well, I used to know a Mr. Andrews."

I said, "You can't get Mr. Andrews. He is dead."

He said, "Well, whom would you suggest?"

I said, "Well, Mr. Larson, you have placed me in a very embarrassing position once. Now you are doing it again. I wouldn't like to suggest anybody because this is a very, very delicate situation, you need a good lawyer,
759 and you had better get one." And he went on to say that he didn't know of anybody and he would appreciate it if I would give him some names. So I told him that under those circumstances I would be glad to recommend some attorneys, that Chicago was full of good attorneys, and that he could see somebody who would protect his interests as such appeared at this time.

I gave him the names of about three attorneys, as I remember. I told him, from what I had given him, that he

couldn't possibly intelligently select any one of the three, because he knew nothing about them, and that I don't know what good that would do him for me to suggest any names.

He had done some thinking about the attorney, to decide what he wanted that attorney to do for him, because he had so far told me nothing as to the status of this matter as far as he was concerned, that when he told me what the actual fact is, from what we heard, that I would be in a better position to recommend somebody.

He said, "I still want to get our own attorney." He said, "I think this is about the time to get one."

Well, I wasn't getting anywhere with him, so I gave him the names of several attorneys, and among which was M. K. Hobbs, whom I had known, and I recommended sev-
760 eral more. He took down the names. I think I put them down on the three-by-five card in my own handwriting, and their addresses, and I said, "You still haven't answered my question, and before you leave here I want you to tell me whether or not Thomasma's story is true or whether your story is true."

He finally said, "Well, my testimony is false and the whole case is false," and he ran out and Carisen ran after him, and from there on, I heard, I think the next day, from Mr. Hobbs.

Q. Do you happen to have in your files a memorandum that you prepared shortly after your conference of November 20, 1940?

A. I have a memorandum that is entitled "Larson vs. Zimmerman, Interference 77565; Conference held with Mr. R. A. Fidler at the office of Davis, Lindsey, Smith and Shonts, 332 South Michigan Boulevard, between 1:30 p. m. and 4:30 p. m., Wednesday, November 21, 1940, at the telephonic request of Mr. Fidler."

I have since found out that that date of November 21, 1940 should be November 20, 1940.

Q. And when did you prepare the memorandum that you are now reading from?

A. When I got back to my office I called Mr. John-
761 son, and right after I finished talking with him I took notes of what had transpired in my conversation with Mr. Fidler, and the following work day, which was the day after Thanksgiving, I dictated from those notes to my

stenographer, and this memorandum is the result of that dictation.

Q. And you dictated the memorandum that you hold in your hand from notes that you made after you returned from Mr. Fidler's office?

A. That is right.

Mr. Freeman: We offer in evidence as Defendants' Exhibit No. 70 the memorandum just referred to by Mr. Alberts.

You have already been given a copy of that memorandum.

Mr. Lindsey: Yes. Could the record show that that was marked Automotive Exhibit 12 in one of the pre-trial depositions?

(Said document was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT NO. 70.)

Mr. Freeman: Q. After the conference of November 28th with Mr. Larson and Mr. Carlsen, after you had returned from the conference at Mr. Fidler's office, when did you next get in touch with Snap-On?

762 A. After Larson and Carlsen left, Mr. Johnson said to me, "What now?"

I said, "Well, the best thing to do is to get the matter to your associates. I would be glad to go to your office at any convenient time, put the matter before them, and let them decide what now."

He thought that was a good idea, and he said: "How about a date?"

I said, "Well, any day will suit me. This matter is urgent. Why not tomorrow?"

And he said, "I will let you know. If tomorrow is all right, you make arrangements with your office so that you can get away if we want you. I will call you," and he did call me the next day to come on, and I got there about one o'clock in the afternoon.

Q. Of the 29th?

A. The 29th.

Q. What did you do, or what was your purpose in going to Kenosha?

A. To put the matter before Mr. Johnson's associates and executives.

Q. And tell us briefly what you there presented?

A. I got there and they assembled, the executives, and

the chief engineer was called in, and the purchasing
763 agent was called in. Mr. Daniel was there, and Mr. Nemitz, Mr. Johnson, Mr. Palmer, Mr. Seidemann. I might say the purchasing agent was Mr. Tetzlaf, and the chief engineer was Mr. Walraven. And Mrs. Johnson called that meeting in the conference room there and sat at the head of the table and told his associates that I was there to set forth the status of the Snap-On-Larson contractual relationship from the very inception to what has happened to date, and he warned them that certain startling things have happened, and he was going to let me give the entire statement to them, and after that they can ask me what ever questions they want to.

So I started from the very beginning and recited the steps that were proceeded with from the time that Larson was sent into my office to the time that I talked to Mr. Larson yesterday, and that he admitted he had told a false story and that he had procured other witnesses to corroborate his false story. I said that the matter was a serious one, but I wanted to assure the executives that whatever did happen does not involve Snap-On Tools Corporation one iota except that they have to look for another source of supply, that was certain, that they would have to get another torque wrench if they wanted to be in the torque wrench business.

764 Q. Coming back to this conference at Mr. Fidler's office, was there any mention of suspicion by any of the people there on behalf of Automotive?

A. No mention—no word like "suspicion" was used. As far as I could gather, it was all cut and dried, and as far as Fidler was concerned he let me know he had the goods, and he expected to deliver the goods. That is the way it was put to me at both of our conferences.

Q. That is, when you say both of the conferences, you are referring to the November 20th conference and the November 28th conference?

A. That is right.

Q. And it was as a result of your conference with Mr. Fidler on the 28th with Mr. Johnson that you confronted Mr. Larson in your office with the facts?

A. That is right.

Q. When you explained what had been told to you, Mr. Larson finally admitted—

Mr. Lindsey: I would like to have the witness testify.

Mr. Freeman: Q. Well, tell us then, Mr. Larson—

Mr. Lindsey: Don't put words in the witness' mouth. This is a critical—

The Court: I thought you had gone over this once.

The Witness: I have gone over this.

765 Mr. Freeman: Q. Tell us quickly.

A. After much hesitation—

The Court: What is the use of having him tell it again?

Mr. Freeman: All right, I will withdraw it, your Honor.

The Court: Unless there is some particular point to it. The witness has told the story once.

Mr. Freeman: Q. Then what happened next after your meeting at Kenosha on November 29th, 1940?

A. Well, Mr. Hobbs called me, I would say, about the 29th of November, 1940, and told me that Larson and Carlsen were in his office, and I said, "I suggested you as an attorney and I know all about their difficulties."

He said that he had had a conference with them, a short conference, wanted to think the matter over. They had told him there was perjury in the case and he wanted to know how I felt about it, and I said, "Well, I want you to know, Mr. Hobbs, right now, that I had no knowledge of anything that had developed up to November 20th 1940 when Mr. Fidler called me into his office. I want to set you straight on that right now."

He said, "Well, I have talked to Larson and Carlsen about that and they have admitted they have concealed that from you. That is not what I am calling you about."

He said, "What do you think of the situation?"

766 I said, "I think it is a very bad situation. They are going to have a hard time from now on, and that the people that you have to deal with are not the easiest people to get along with, that they have let that fact be known to me already," and I then repeated what Mr. Fidler had told me at the end of that conference, that I had for the first time in my life heard the expression, "unleashing the dogs," and that to me meant that they really were going to go after Larson and Carlsen, and that I might as well let him know what is coming.

He said, "Well, what do you suppose ought to be done in the matter?"

I said, "Well, if I had my way about it and could possibly be in the position to give him advice—and I am not telling you what they should do—I frankly feel that a con-

cession of priorities should go to Zimmerman voluntarily at the instance of the opposing side, or send it direct to the Patent Office, if they won't accept it, and I think it would be easier for Larson and Carlsen to face the music now than at any other time."

He said, "Well," he thought that the best thing to do would be to try to make a settlement, he thought he could effect a settlement.

I said, well, whatever he thought he could do for
767 them, he should submit to me and I am sure Snap-On will go as far as it possibly can to avoid any further pressure on Larson and Carlsen, that all we wanted to do was to fill our present commitments, and from there on we didn't want to have anything more to do with that contract or with Larson and Carlsen.

Mr. Freeman: Mr. Fidler, do you have Mr. Alberts' original letter of December 3, 1940?

Mr. Fidler: Just a moment.

Mr. Freeman: Q. Do you have your carbon copy?

A. Yes, I have a letter addressed to Davis, Lindsey, Smith and Shonts, December 3, 1940.

Mr. Fidler: Let the record show I have just handed counsel for Defendants a copy of the letter which I presume is the one he had in mind.

Mr. Freeman: That is correct, letter dated December 3, 1940.

We offer this letter from Mr. Alberts to Davis, Lindsey, Smith and Shonts, dated December 3, 1940, in evidence as Defendants' Exhibit No. 71, and we are agreed we can substitute a photostatic copy?

Mr. Lindsey: Yes, sir.

Mr. Freeman: So that you may have the original for your files.

768 (Said document was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT NO. 71.)

(Defendants' Exhibit No. 71 was thereupon read to the Court by Mr. Freeman.)

Mr. Freeman: Q. After you had conferred with Mr. Hobbs on the telephone what was the next event that took place?

A. Well, I didn't hear from Mr. Hobbs until he sent me a copy of the letter under date of December 6, 1940, which contained a proposition of settlement to Mr. Fidler. I

did not participate in that proposition. He was merely advising me what he was offering in behalf of Larson.

Q. After the proposal made by Mr. Hobbs in accordance with his letter of December 6, 1940, what took place thereafter?

A. Well, on December 13, 1940 Mr. Hobbs called me in the morning and said he had expected Mr. Lindsey and Mr. Fidler at his office for a conference on the matter, would I care to attend. I said I would be glad to attend, and I did attend.

I might say that before that call from Mr. Hobbs I received a telephone call from Mr. Hobbs prior to that, and also a call on the same day from Mr. Lindsey.

Q. And do you have any memorandum with respect
769 to the telephone conversation that you had with Mr. Hobbs?

A. Yes I prepared a memorandum on December 11, 1940 that contains the facts given me by Mr. Hobbs and also the request made by Mr. Lindsey and, on the same day, my replies to that request.

Q. And did you send copies of that memorandum to Snap-On?

A. Well, I sent a copy of the November 20th conference memorandum to Snap-On and I also sent this memorandum, December 11th, 1940, with a covering letter of December 12th, 1940 to Snap-On Tools Corporation.

Mr. Lindsey: I have never seen it. I wonder, Mr. Freeman, if you will ask the witness if this was in his possession at the time we made a call for the production of all the documents including his memorandum to Snap-On.

Now, as I recall, the two memoranda which have already been produced, that is, the one concerning November 20th conference, and the one concerning the November 28th conference, and probably this, were not produced, although it was represented to us at the time we called on Mr. Johnson to take his pre-trial deposition there was a full demand, and the other two memorandums, that is, the one with respect to the November 20th, and the one with respect to November 28th, were withheld until Mr. Alberts, the
770 last witness whose deposition was taken, testified.

These other two memoranda, the one with respect to November 20th and the one with respect to November 28th conference were used by you during the examination of Mr. Fidler when you took his deposition.

Is that a correct statement, Mr. Freeman?

Let us get it on the record.

Mr. Freeman: Frankly, I can't follow you. I haven't that sort of a retentive mind.

Mr. Lindsey: I state it to be a fact, may your Honor please.

Mr. Freeman: Let me state, if any memoranda were not given—

The Court: Let us find out. You started out to ask a question and then you made a long speech. I don't know what you are driving at. I understand from the way you started, you wanted to know if this paper was in the possession of this witness at the time you made the demand on him for the delivery of all the papers of a similar nature.

Mr. Lindsey: That is correct, and the other two memoranda with respect to the other two conferences.

Mr. Freeman: I will let Mr. Alberts answer that. He heard the question.

771 The Witness: I was called at the end of an adverse examination, Mr. Fidler's, without notice. I was called about a quarter to five. I was at the adverse examination, and I was asked if I would testify without notice. Mr. Freeman answered for me that I would, and I told Mr. Lindsey I didn't have my files with me, I had a few papers, not all of them, and he said, "I don't want any files, go ahead." So I testified.

Mr. Lindsey: May your Honor please, the demand was to produce all of these records—

The Court: When was the demand made?

Mr. Lindsey: The demand was made about the 10th of April, to have them present when Mr. Johnson's deposition was taken on the 14th. These memoranda were not produced until, as I recall, April 30th, after Mr. Fidler and Mr. Wacker's depositions had been taken.

I want to know whether they were in your possession or counsel's possession at the time we took Mr. Johnson's deposition and at the time you took Mr. Wacker's and Mr. Fidler's deposition.

Mr. Freeman: They were certainly not in my possession, and I might say—

The Court: Never mind what you are going to say. Let us get the answer to this question. The question is a

772 very simple one. What is the answer?

The Witness: The files of Snap-On Tools Corpora-

tion were brought from Kenosha by Mr. Grover, who is sitting at that table.

The Court: Was this memorandum——

The Witness: They were not there, and at that time, after this adverse examination, I asked Mr. Grover about those memoranda, and he said that he would look into it, he thought he had all the files, and I searched those files and didn't find them. I told him he had better look into them, and he did look into them after that, and he advised me that Mr. Daniel, to whom these reports were going, had a desk file in his desk, and which he didn't know about at the time. Mr. Grover is a new man with Snap-On, and he had since found those memoranda and I think the originals are here in Court.

Mr. Lindsey: I would like to ask this question: Isn't it a fact, Mr. Alberts, that when Mr. Freeman took Mr. Fidler's deposition those memoranda were before Mr. Fidler and he used them in examining Mr. Fidler without submitting them to us?

The Court: You are mixed up. You have "Fidler" in there twice.

Mr. Lindsey: Mr. Freeman. Is that correct?

773 The Witness: I told Mr. Freeman about these memoranda there, but he said he didn't want to be bothered with them at that time.

Mr. Lindsey: But he did use them in examining Mr. Fidler?

The Witness: He wasn't using them to exaxmine Mr. Fidler.

The Court: Have we discovered anything yet? Is your question answered?

Mr. Lindsey: I think I have discovered something. I will bring it out on cross-examination.

The Court: If you are satisfied, all right, let us go ahead.

Mr. Freeman: Would you please read my last question and the answer to that question?

(The last question propounded by Mr. Freeman and the witness' answer were read by the Reporter.)

Mr. Freeman: Q. I hand you the originals which have been given to me by Mr. Grover of Snap-On, and I will ask you to state whether that is your letter and the copy of the memorandum which went along with the covering letter of December 12th, 1940?

A. That is. I might state the pen corrections on the

memorandum were placed thereon before I mailed it to Mr. Daniel.

774 Mr. Freeman: We offer as Defendants' Exhibit No. 72 the memorandum of December 11, 1940, and as Defendants' Exhibit No. 72-A the covering letter of December 12, 1940.

(Said documents were thereupon respectively received in evidence by the Court and marked as Defendants' Exhibits Nos. 72 and 72-A.)

Mr. Freeman: Q. After having the telephone conversation with Mr. Hobbs what took place?

A. Well, when I got these two calls, Hobbs outlined what he had submitted, and he had given me, made the statement to me he thinks he has gone as far as he could with the other side, and that he didn't see any way of settling the case, and that he was just about washed up with it, or he is going to withdraw, or something to that effect.

The same day, Mr. Lindsey called me and asked me whether or not Snap-On would be willing to pay any money to AMMCO. I replied with an emphatic No. He asked if Snap-On would be willing to cease selling the present type of wrench when their present commitments of something like 3,100 wrenches were filled, and after AMMCO would give Snap-On a release. He also asked me if Snap-On would be willing to admit the validity of any claims that may eventuate into a patent on any of the Zimmerman applications in the Interference, and any of the Zim-
775 merman claims that may be involved in a patent that would subsequently be granted.

I replied that Snap-On undoubtedly would be willing to concede validity of those claims that were in Inferference, and none other, because we didn't know to what extent they would become—that patent application, what the character of the claims would be at that time that they were ready for issuance, and that is as far as I could possibly recommend, a concession of validity to AMMCO for my client.

He then asked me if Snap-On would be willing to turn over to AMMCO the reserve fund held by Snap-On, and which was the fund of Precision Instrument Manufacturing Company. I replied by saying that when we got a proper release we would be willing to turn over that fund to Precision, and it was up to Precision to determine what they wanted to do with the fund, and Mr. Lindsey referred to the fund as a "litigation fund" over the telephone, and

I corrected him by saying it not only was a litigation fund but it was a fund to indemnify Snap-On in the event of a decree against it.

Q. And was there a proposal in the form of an agreement, that is, a proposed agreement submitted to you by Automotive?

776 A. On December 13th at the conference—

Q. And where was that conference held?

A. In Mr. Hobbs' office. They submitted a joint proposal and the front of it they labelled a "Tentative Draft of a Contract for Precision and Snap-On as Joint Parties to the Contract."

Q. Who was present at that conference?

A. Mr. Lindsey, Mr. Fuller, Mr. Hobbs and myself.

Q. Proceed.

A. I looked over the contract rather hurriedly. I noticed in there that they were including a second patent application filed by Larson that was not involved in Interference and had nothing to do with the Interference, that they asked for a concession of validity of all the claims, not only in the Zimmerman applications and whatever claim may eventuate into a patent, but also they asked for title to the Larson application in Interference, and Larson's second application which was not in Interference, and for a concession of validity, and all the claims and all of the four patent applications.

I at that time told Mr. Lindsey that this Tentative Draft went much further than I had ever expected any proposition to go, and that thus far we were only talking about concession of priority, and this proposed draft or
777 tentative draft not only provided for concession of priority but the whole works. That is just the way I put it.

Q. And you mentioned something about a defense fund. Was that also requested?

A. I don't remember that at this time.

Oh, yes. In Paragraph 7 it says:

"Snap-On and or Precision agree to turn over to AMMCO upon execution of this agreement such monies as remain in a certain 'defense fund' (built up by agreement or understanding between Snap-On, Precision and or Larson) after deducting from such fund all necessary and legitimate expenses which have heretofore properly accrued as against said fund.".

I told them that was contrary to any expression he got from me over the telephone and, frankly, I was going to reserve opinion, I would take it up with Snap-On, but I think that he had better permit me to submit a tentative compromise contract. He said, "No," that if there is any compromise contract to be submitted he was the one that is going to be submitting it to me, and not myself to him.

Q. Who made that statement?

778 A. Mr. Lindsey. But I took this up with Snap-On Tools Corporation. In fact, I went there on December 17th, 1940 for the purpose of getting Snap-On's best proposition, and I told Mr. Hobbs that I was going there, that he ought to be there or at least Larson should be there because we couldn't submit anything without their approval, and he said he wouldn't be there, but he didn't see any reason why Larson couldn't sit in, and I went to Kenosha and I found Larson there, and I think he was there on some other matters, than the torque wrenches, that they were making at that time, and I discussed the matter fully with Mr. Daniel, and we later went in to see Mr. Johnson and told him what we arrived at, and told him what we found in the files of Snap-On, and that second application, we found from the conception records in the files of Snap-On was a joint contribution by Larson and Walraven, the chief engineer of Snap-On, and that under such circumstances we certainly would not permit Larson to assign that second application, and that we would have to forfeit that particular patent application, substituting a joint application in the name of Walraven and Larson, that that was the proper procedure; that I told Mr. Larson in view of the fact that certain of the contributions came from Snap-On, that title to that second patent application, after it was revealed as a joint application, should certainly

779 remain in Snap-On's hands, and he agreed to that.

He came back and on the same day I wrote to Davis, Lindsey, Smith and Shonts, and I told them I was in Kenosha, and I set forth the facts I ascertained there, and in fact information came to me from Mr. Daniel before that time that he thought that he remembered something about that second application being a joint application, and he thought it was joint, and I told him it wasn't, that when Larson submitted that report to me he told me it was his idea and he never said anything about Walraven, and that it was filed as a sole application.

Anyway, I went there to check that, and I found that to be substantially correct, and Mr. Larson agreed that the facts were substantially correct, and he didn't know the difference between a sole and a joint contribution, and he thought he contributed most of it and therefore it should have been his invention at that time, and it was so filed.

Q. Did you at this conference in Mr. Hobbs' office on December 13th, 1940 confer with Mr. Hobbs after Mr. Fidler and Mr. Lindsey had left, do you recall?

A. Well, a statement was made in that conference that I didn't quite understand, and it appeared to me that I 780 wasn't in on everything, and after they left I said to Mr. Hobbs, "What did Mr. Fidler mean by 'done away with'?"

And he said, "If the matter was settled everything would be done away with."

I said apparently he had some conversations that I wasn't in and he admitted he had lunch with him several times, or at least one time that I wasn't present, and I knew nothing about it, that they had some conference I knew nothing about, that he didn't report to me. I thought it was all right. I thought he should explain it to me.

He said, "Well, frankly, there is a tentative understanding submitted by Mr. Fidler that if the settlement goes through, or if a settlement goes through all the parties would have a bonfire of all the existing records and that would be the end of it," and that is what he told me at that time, and I said nothing further, and I went back to my office and went to Snap-On about four days after that and I reported to Mr. Fidler under date of December 17th, 781 1940.

Q. I believe at the close last evening you had testified about having conferred with Snap-On on December 17, 1940, at Kenosha, and that thereafter you returned and wrote some letter?

A. That is right.

Q. Do you have the letter that you wrote to Mr. Fidler after your return from Kenosha?

A. I wrote a letter under date of December 17, 1940, of which a copy is in my file.

Mr. Lindsey: Do you wish the original, Mr. Freeman?

Mr. Freeman: I might want it to read from. It might be a little easier.

Mr. Lindsey: I think it would be a little clearer.

Mr. Freeman: I wonder if I might have Mr. Ooms read it instead of myself.

(Said letter of December 17, 1940, was thereupon read by Mr. Ooms.)

Mr. Freeman: We offer the letter of Alberts to Davis, Lindsey, Smith & Shonts, dated December 17, 1940, as
782 Defendants' Exhibit No. 73.

The Court: No objection, it may be admitted.

Mr. Lindsey: No objection.

(Said letter, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 73.)

Mr. Freeman: And that letter was received in your office, Mr. Lindsey, on December 18th?

Mr. Lindsey: Undoubtedly.

Mr. Freeman: Well, it has the received stamp on it?

Mr. Lindsey: Yes.

Mr. Freeman: Q. And what next did you hear from Davis, Lindsey, Smith & Shonts, after you wrote the letter of December 17, 1940, Defendants' Exhibit 73?

The Witness: A. I received a letter under date of December 18, 1940, over the signature of Mr. Lindsey, coupled with a demand to produce a copy of transcript of the testimony taken on behalf of the party Larson. And also, that was accompanied, as a part thereof, by a notice of taking depositions in behalf of Zimmerman. And I have in my file letter of December 18, 1940, a copy of that demand and the notice of taking depositions of Thomas Raftery, who was the reporter doing the Larson deposition; that is, the entire deposition on behalf of Larson,—
783 Herbert J. Schmid, who was an assistant in the Davis, Lindsey, Smith & Shonts office; Mrs. Alice Larson, who was the wife of Kenneth R. Larson; Mrs. R. E. Fidler, opposing counsel; and Mrs. Addie Carlsen, who was the wife of Mr. Carlsen.

On that same day I sent a letter to Mr. Hobbs, enclosing a substitute power of attorney to him in the Interference proceeding. In that letter I stated that when he was first retained by Larson, and we first talked about his retainer, I was willing then to furnish him with a substitute power of attorney. He said at that time that it would not be necessary to send that right away, and when he wanted it he would request it. He didn't think that it would ever be needed, because he thought a settlement could be effected.

And I have a copy of my letter to Mr. Hobbs dated December 18, 1940, together with a copy of the substitute power of attorney, the demand in behalf of Zimmerman, and the notice of taking the depositions in behalf of Zimmerman.

Q. Do you recall whether you wrote Mr. Hobbs prior to or after you had received Mr. Lindsey's letter of December 18th?

784 A. No; Mr. Hobbs—I undoubtedly wrote Mr. Hobbs prior to that time. Whatever I had written, I testified to yesterday. I do not have any recollection of writing him after that date, wherein I enclosed a substitute power of attorney.

Q. And how was Mr. Lindsey's letter of December 18, 1940, delivered to you?

A. It was delivered by Mr. Schmid, who served me with the demand and the notice of taking of the Larson testimony in depositions which I just recited.

Q. And did you have a copy of Mr. Lindsey's letter of December 18th in your file?

A. I have the original in my file.

Mr. Freeman: We offer the letter of December 18th, on the letterhead of Davis, Lindsey, Smith & Shonts, as Defendants' Exhibit 74.

(Said document was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT No. 74.)

Mr. Freeman: And I will read the copy of the letter; it is rather short.

(Letter, Defendants' Exhibit No. 74, read by Mr. Freeman.)

Mr. Freeman: Q. After receiving the letter of
785 December 18th, with the demand therein, what did you next receive from Mr. Lindsey?

The Witness: A. I might say that on the morning of December 19, 1940, Mr. Schmid brought to my office a letter in a sealed envelope addressed to me, and personally handed it to me. He asked my stenographer if he could see me, and he came into my office and he handed me that letter of December 19, 1940. The same day I received letters from Mr. Hobbs, or copies of letters.

Q. You say the same day you received a copy of a letter from Mr. Hobbs?

A. Yes.

Q. Do you have the date of the letter that you received from Mr. Hobbs?

A. His letter was dated December 18, 1940; that arrived in the mail the morning of December 19, 1940.

Q. And that was a letter dated December 18, 1940?

A. That is right.

Q. And addressed to Precision Instrument Company and Kenneth R. Larson?

A. That is right.

Q. Do you have the copy that you received?

A. I received the copy which was addressed to the Precision, and also an original letter addressed to me
786 returning my substitute power of attorney.

Mr. Freeman: The copy of the letter from Mr. Hobbs to Mr. Alberts is already in evidence, as Defendants' Exhibit 67. I do not think the Court has had the contents of that letter; I will read it:

(Counsel reading letter, Defendants' Exhibit 67.)

The Witness: A. That copy was accompanied by this original letter, signed by Mr. Hobbs, addressed to me.

Mr. Freeman: And I now read the letter of transmittal from Mr. Hobbs to Mr. Alberts, with the letter that I have just read as Defendants' Exhibit 67:

(Counsel reading said letter.)

Mr. Freeman: And we offer as Defendants' Exhibit 75, the letter of Haight, Goldstein & Hobbs to Mr. Alberts, dated December 19, 1940.

(Said letter was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT No. 75.)

Mr. Freeman: Q. What did you next hear from Mr. Lindsey, after the service of the notice and the demand for the production of certain papers and records?

The Witness: A. The next day I received a letter, to which I testified, served upon me personally by Mr.
787 Schmid of Mr. Lindsey's office.

Q. That is the letter that was delivered to you personally, and not through your secretary or stenographer?

A. That is right.

Q. And do you have the original?

A. I do.

Mr. Freeman: This is a letter, your Honor, that is already in evidence as Defendants' Exhibit 68; and I think you have had the substance of that letter. I should like here, to just get the further continuity of this correspond

ence,—it has been read, and I will re-read it, because it will give you the continuity:

(Counsel thereupon read Defendants' Exhibit 68.)

Mr. Freeman: Q. In the letter delivered to you personally there was an additional copy of the letter that I just read?

The Witness: A. There was.

Q. And what did you do with that letter?

A. I sent it to Snap-On Tools Corporation the same day that I received it, together with a forwarding letter which I believe is in evidence. And also enclosed with that letter my reply to Mr. Lindsey's letter of December 19th.

Q. And do you have the reply to Mr. Lindsey's letter of December 19th?

A. I do; I have a copy.

Mr. Freeman: Do you happen to have the original, Mr. Lindsey?

Mr. Lindsey: I think I have it right here; just a second:—

(Mr. Lindsey producing letter.)

Mr. Freeman: We now read the letter of Harry C. Alberts of December 19, 1940, to Davis, Lindsey, Smith & Shonts, in reply to Mr. Lindsey's letter of the same date, December 19th.

Mr. Ooms: Letter on the letterhead of Harry C. Alberts, to Davis, Lindsey, Smith & Shonts:

(Said letter was thereupon read by counsel.)

Mr. Freeman: And we offer the letter of Harry C. Alberts to Davis, Lindsey, Smith & Shonts, of December 19, 1940, as Defendants' Exhibit 76.

(Said letter was thereupon received in evidence by the Court and marked as DEFENDANTS' EXHIBIT No. 76.)

Q. Did you ever receive a reply from Mr. Lindsey, or Davis, Lindsey, Smith & Shonts to your letter of December 19, 1940?

A. I did not.

Q. What happened after December 19th then?

A. Well, on that same day, Mr. Carlsen and Mr. Larsen came to my office and asked me what this thing was all about and they told me they had received a letter from Mr. Hobbs and he didn't understand how a lawyer could withdraw after they were retained or hired, I think he said.

I asked him if he had met Mr. Hobbs' financial requirements and he said they had and he wanted to know what this thing was all about, can a lawyer do such a thing to him.

I told him that I didn't understand the whole situation myself, things were happening so fast, especially it seemed to me that I did not see the entire picture myself, that as far as I am concerned I am going to let the matter go as it will go and have it proceed and I am going to protect the interests of Snap-On as they appear and I thought he should do the same thing.

I thought he should be willing at that time, in view of everything that had happened, to face the music. I told him in the end he would have to face it any way and
790 that was the easiest time to do it because, to my mind, the entire thing looked like a collection case and I didn't think the District Attorney would use his offices to enable others to seek a civil remedy through a criminal element and I was firmly of the opinion that if he was my client, I would be willing to advise him to face the music and go through with this matter.

Q. That was on December 19th?

A. That is right. And then he said, "Well, what do you want us to do?" or something to that effect.

Q. "He," Larson?

A. Larson. I said, "I don't want you to do anything. I am merely telling you these things under the assumption if you were my client that is what I would recommend. Now, if you are not willing to face the music, I cannot do anything for you."

He again stated he would like to settle the matter, he didn't want to fight in view of everything that had happened and in view of the mistake he had made, in view of the perjury and all that had transpired up to that time.

I then told him if he felt that way about it, the best advice I could give him was to return to Mr. Hobbs and have him re-initiate settlement negotiations in his behalf but Snap-On Tools Corporation was not interested
791 in any further settlement negotiations.

And at the same time he told me that he didn't know what to do about the subpoena of his wife and Mr. Carlsen said, "I don't know what to do about the subpoena of my wife."

I asked him what circumstances would prevent them from appearing on December 23d. Mr. Larson told me he had four children; that at least two of them were ill; that he had no help in the house, and his wife couldn't possibly leave the house.

Mr. Carlson told me his wife was running a beauty parlor and that was the most lucrative period of the year for her and she couldn't possibly leave the beauty parlor. They were quite concerned about these subpoenaes.

I told them I would do one thing for them and that was to prepare affidavits for Mr. Carlsen's wife to sign, and for Mr. Larson's wife to sign and I would go in before Judge Barnes and ask for a postponement of their appearance on the strength of those affidavits, and if he wanted to do that and had no other course open to him, after he had talked to Mr. Hobbs, to come back to my office and pick up the affidavits.

I prepared them and I have them in my file and I have the motion in my file already prepared but they did
792 not return to my office that day, so, I did nothing further in that respect.

Mr. Lindsey: May I see those, Mr. Alberts?

Mr. Freeman: You bet you can.

(Papers handed to Mr. Lindsey.)

Mr. Freeman: We offer in evidence as Defendants' Exhibit 77, a copy of the notice served by Davis, Lindsey, Smith & Shonts, with respect to the taking of the testimony of Rafferty, Schmid, Alice Larson, R. E. Fidler and Addie Carlsen in Interference 77565.

It is all right with you if we use a copy?

Mr. Lindsey: No objection. I think we can have it understood, Mr. Freeman, that copies can go in the same as originals, unless there is an objection.

(Said document was thereupon received in evidence by the court and marked as DEFENDANTS' EXHIBIT No. 77.)

Mr. Freeman: Q. What followed after December 19th, when there was an exchange of Lindsey's letter to you and your letter to Mr. Lindsey and your conference with Larson and Carlsen with respect to their wives testifying? What happened next?

793 A. The next morning, or December 20th, I received a call from Mr. Hobbs who said he had had an

exchange of some harsh words with Mr. Lindsey over the telephone, that he had hung up on him, and that Mr. Lindsey had called him back and apologized and was willing to sit down again and would I go over with him.

Q. Over where?

A. To Mr. Lindsey's office.

Q. With whom?

A. With Mr. Hobbs. I told him that I personally didn't have any stomach to face Mr. Lindsey any further in view of his letter, that I wasn't going over there to be taken, and we ended our conversation in about that way.

Q. This was a telephone conversation?

A. That is right.

Q. What happened after that?

A. Mr. Hobbs came to my office about 1 p. m., I would say.

Q. On what date?

A. On the same day.

Q. December 20, 1940?

A. That is right.

Q. Proceed.

794 A. And let me know in no uncertain words that Mr. Lindsey and myself apparently were two hard men to get together and I shouldn't feel that way about the matter but in the interest of everybody, it would be my duty to go over with him.

I still told him I felt the same way about it and I frankly asked him if he thought that the proposition they submitted was a fair one and he replied by saying—he was quite irritated because I asked that question, he showed that very plainly—that that wasn't a fair question under the circumstances.

I had never before discussed with him the propositions of Mr. Lindsey and Mr. Fidler as to whether or not they were fair, the entire matter up to that time was negotiated on the basis of what could be done in view of the fact that Snap-On had a certain right under that existing contract with Larson and Larson wanted to do things that were, in a measure, contrary to the rights of Snap-On; that we were not going to be technical about that contract; that whatever was reasonable, I would recommend to Snap-On, and I was sure they would take my recommendation, but, so far, I didn't see anything that was reasonable; that I thought my written proposition on December 17th to Mr.

Davis' firm was fair, was further than I should have
795 gone under the circumstances; that I was willing to
do that because Larson was so anxious to settle and because he apparently was afraid of the consequences.

And we discussed the matter further and Mr. Hobbs stated squarely, in response to my question, if he thought the demands of Mr. Lindsey were fair, that, of course, they weren't fair but under the circumstances that was the best thing to do.

I replied by saying I didn't think that Larson, nor Snap-On could afford to do all of those things; that one thing I would flatly refuse was a concession of validity and an agreement not to infringe any claims that may be issued or may thereafter be issued in the Larson application and the two Zimmerman applications; that I did not propose to have Snap-On hamstrung by such an unnecessary restriction; that if and when they procured the patents they ought to be willing to stand on the merits of those patents and Snap-On should be entitled to defend it openly as other defendants would be.

Q. You are talking about claims over and above those involved in the Interference conference?

A. Yes, sir.

Q. Just so the record is straight: You were willing as counsel for Snap-On, to recomend an agreement on the
796 part of Snap-On that it would recognize the validity of the claims involved in the Interference subject matter?

A. That is right. We were parties to that Interference and we knew what those claims covered and I was willing to go that far.

Q. Did you and Mr. Hobbs go over to Mr. Fidler's office that day, December 20th?

A. We did but before we went over, he said he understood Mr. Lindsey had a better proposition to offer me and that in all probability the opposing parties were now reconciled to some compromise; that I certainly would not hurt my clients by going over there.

And I accompanied him to the office of David, Lindsey, Smith & Shonts.

Q. Now, just tell us what happened at Mr. Fidler or Mr. Lindsey's office when you were there with Mr. Hobbs on December 20, 1940.

A. We arrived there and Mr. Hobbs asked the telephone

girl to announce his presence and my presence and we were taken into or sent into Mr. Lindsey's office.

We met with Mr. Lindsey there and Mr. Fidler. We again exchanged the usual greetings and Mr. Lindsey
797 said we had better go into another room, in Mr. Davis' office, which was at the end of that corridor in their offices.

We went in there. We were all seated. Mr. Lindsey sat behind the desk in that office and told me that I shouldn't have interpreted his letters the way I undoubtedly had interpreted them; I shouldn't have read into them everything that I apparently had read into that letter; that he did not intend that that letter should be taken the way I apparently had taken the letter, and that he didn't intend also for me to read between the lines.

I made no comment and then he proceeded to tell us a few jokes and after that we started discussing the contract again, and he had a proposal in written form, of which I have here a copy.

Q. Have you completed your answer, Mr. Alberts?

A. No, I have not. I am looking for the copy of that contract.

Well, I have here that contract which was submitted to me by Mr. Lindsey and it is now in the same condition if was then with the exception I put a pen and ink note at the top of that contract about the fact that the conference was held with Fidler and Lindsey on December 20, 1940; that this contract was not signed; that it included the
798 patent application on the Springtail feature I had previously written down be assigned by Snap-On to Automotive.

I looked over the contract then and I made up my mind, after reading it, that it wasn't much different than the contract submitted December 13, 1940, of which I also have a copy, except he had separated Precision and Larson from Snap-On and that he had substantially the same agreements for each but they were separate agreements, and that was a request I made in my letter of December 17, 1940.

Q. Were there modifications made then over and above the proposed agreement you have just referred to in Mr. Lindsey's office on December 20th?

A. We then discussed it and they made modifications and it was getting late in the afternoon, they had inserts made on separate paper—I have one of the inserts here

that was made in their office of which they gave me a copy—and it described definitely what the limit of the number of wrenches that Precision could make and which Larson—which Snap-On could sell, and we finally agreed, after many telephone calls by Mr. Fidler to Mr. Wacker—he would go out of the room and say he was calling Mr. Wacker—and we finally agreed that six thousand
799 wrenches could be manufactured by Precision and sold by Snap-On under the terms of this agreement; that thereafter Snap-On would pay ten per cent of the net selling price if they had on hand orders in excess of six thousand at that time.

I told him things were happening fast, that the orders were coming in from the government and from the aircraft industry, that I didn't know at that moment just what the number of orders would be on hand nor did I know or could I know what was in the mail by their prospective customers—from their prospective customers.

So, Mr. Fidler finally came in and said he had talked with Mr. Wacker and that six thousand was the limit and for Fidler not to call him any more.

Q. Then what did you do?

A. Then I still didn't like the concession that they had in the contract of conceding validity and agreeing not to infringe any claims allowed or hereafter allowed in any of the three patent applications.

Mr. Hobbs stated Mr. Larson was willing to assign the patent application in Interference and they exacted the same concessions in our contract as to that validity and infringement as they did in the Precision contract.

800 I told them I still couldn't see my way clear to accept such a concession. I didn't see any need for it. If they had meritorious patents issued to them, they had no reason to exact that concession, it was an unreasonable one.

But Mr. Fidler then said, "You heard what Mr. Wacker told me, not to call him any more, and we are not going to call him any more. Now, that is the contract."

Q. So, what did you do then?

A. I said, "Well"—they said it had to be settled and settled fast and they would like to settle it that day.

I said the only thing I could do was call Snap-On. And Mr. Fidler took me to one of their private offices in the suite and gave me access to call Snap-On Tools Corporation.

That was quite late in the afternoon, I would say it was about four o'clock at least. And I called Snap-On Tools Corporation and asked for Mr. Johnson and he was out, or at least he wasn't in his office.

I asked for Mr. Daniel and he answered the telephone. I told him what had transpired, that I was at Mr. Lindsey's office, and we were again talking about a contract and the only thing I could see was accomplished is the limit of six thousand wrenches they could hereafter sell of the type
801 that they were then buying from Precision; that they had taken out of this contract the requirement to assign this second Larson application; that in all other respects I didn't see any difference between the contract in its final form and their final proposition and the previously submitted contracts about which I had written them and which resulted from Mr. Lindsey's letter of December 19th and my reply on the same day and Mr. Hobbs' withdrawal.

And I told him, "I presume you have received them this morning."

He said, "I have received all those letters, yes."

I said, "Now, it is a question of taking this or standing the consequence of what they may mean by their letters.

"You have them before you. You know as much about what they have in mind as I do now. I don't know what you want to do about it but it is a question of one or the other."

And Mr. Daniel said he would certainly be placed in a difficult position, that Mr. Johnson was not here and he didn't know whether he ought to take the responsibility but from what had transpired and some of the letters before
802 him, he said, "I don't see there is much to do but sign the contract. Right or wrong, they could bring suit against Snap-On, and right or wrong we don't want to get into a suit."

He finally said, "Well, I will take the responsibility for you okehing that contract. I don't see you can do any more and I don't see Mr. Johnson could do any more, even if he was here, and I will try to explain the situation to him when he is in the office."

So, I went back to the conference room and told them Mr. Johnson wasn't there; that I had talked to Mr. Daniel, who was assistant secretary, and handled the patent matters; that I don't think the by-laws of Snap-On—I didn't know—that the assistant secretary could sign contracts, I

didn't think he could, but I really didn't know what Mr. Daniel's authority was, but he said, subject to, of course, Mr. Johnson's final word, that he would recommend to Mr. Johnson to sign the contract in view of everything that has been transpiring and the fact I apparently was at my end and he certainly didn't like the whole situation but didn't want to go through any more of it.

Q. And the agreement made as of the 20th day of December, 1940, Defendants' Exhibit 5, between Snap-On and AMMCO was then executed a few days later, is that correct?

803 A. They gave me a copy and I sent it on to Snap-On. I called Mr. Daniel and told him the contract is in the mail, to please get in touch with Mr. Johnson immediately, they wanted to finish this thing up before Christmas, and as long as we had gone this far, and he has tentatively okehed it, I think it ought to be done promptly, and he said he would take care of it.

Q. Do you recall when the exchange of signed copies of the agreement was made?

A. I got in touch with Mr. Hobbs and he got in touch with me and when we had the copy signed by our respective clients and the assignment by Snap-On to Precision of the Larson patent Interference, he had an assignment from Precision to Automotive signed, we agreed we would both go over there and deliver the contracts.

Q. When was that delivery made?

A. That delivery was made in the early afternoon of December 24, 1940.

The day before Christmas we went to the office of Davis, Lindsey, Smith & Shonts. A Christmas party was in progress and Mr. Fidler was called out. It took a little while before he came out. He seemed to be in high
804 spirits there and we told him we had the contracts, did he have his.

I think also I might say we called in advance to be sure he would have his client's signature.

Mr. Freeman: That is all. You may cross-examine.

805 *Cross-Examination by Mr. Lindsey.*

Q. Mr. Alberts, as I understand your testimony, on November 28th, 1940, after you had heard Mr. Thomasma's story in Mr. Fidler's office, Mr. Larson flatly confessed to

you that he and several of his witnesses had perjured themselves in the Interference testimony, is that correct?

A. It is.

Q. Now, I will hand you a letter to me of December 19, 1940, which is Defendants' Exhibit No. 76.

May your Honor please, I would like to hand your Honor a photostatic copy of that because I am going to refer to it for sometime.

You will note that in the second paragraph of Page 1 of this letter you first refer to a conference which you had with me and others on December 13, 1940, and in the second full paragraph, the second sentence, you say—

A. Is that page 2?

Q. Page 2.

"The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28th, 1940."

Was that statement true or false?

806 A. That is true, in the sense in which I incorporated that sentence in that paragraph, yes.

Q. Was that statement alone false, without any further explanation?

A. Oh, I was—that statement is not false.

Q. Well, you had been given other evidence leading to wrongdoing, had you not?

A. Not by you or anybody in AMMCO's behalf. That is what I was talking about.

Q. But you say:

"The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office."

Now, you don't limit that to what Mr. Fidler or Mr. Wacker or Mr. Johnson said to you?

A. The letter was addressed to you. I certainly was limiting it to whatever you gave me. I wasn't telling you what was told to me in confidence between an attorney and client.

Q. What you were doing in making this statement that "The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28th, 1940," was to mislead me and Mr. Fid-
807 ler into believing that Mr. Larson had not confessed to you, isn't that the truth?

A. That is not the truth.

Q. Why did you make this statement?

A. I was predicating that on the threats that you addressed to me, that your threats were only based upon that information which you had given to me. Your threats were not based on what I had learned through Mr. Larson.

Q. Now, you further say, and I read the next sentence: "That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson."

That was Mr. Thomasma, wasn't it?

A. Mr. George Thomasma.

Q. "The only charge of wrongdoing"—and I am continuing to read your own language, Mr. Alberts—

"The only charge of wrongdoing thus far"—thus far—"is at the instance of the self-confessed wrongdoer."

A. That is right.

Q. That was Thomasma?

A. That is right.

808 Mr. Freeman: "Thus far" was only in there once, wasn't it?

Mr. Lindsey: I think the record will show that I was emphasizing "thus far."

Q. Now, the only charge of wrongdoing was at the instance of Thomasma at that time?

A. Construed in the light that I was replying to your letter, that was the only charge that your firm or anybody in your behalf or on behalf of AMMCO made known to me. I wasn't telling you what I had learned from others.

Q. You had charged Larson, had you not, when you returned to your office?

A. That was between Larson and myself. I wasn't telling you.

Q. Will you please answer the question, Mr. Alberts? Did you charge Larson when you returned to your office?

A. I so testified. I certainly did.

Q. There was another charge, though, we didn't make, isn't that correct?

A. You are misconstruing that entire reply. Your threats were based upon what you knew, and my reply was based upon what you knew and upon what you conveyed to me, and not what I learned through confidence. I wasn't handing over Mr. Larson to you to do what you
809 wished to do when you had already threatened me on meager evidence. What would you have done to Lar-

son if I had told you everything Larson told me? That was the very spirit in which that reply was given, yes.

Q. Now then, on the next page of your letter to me, towards the bottom, you say:

"I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker."

Would you please look at the letter so that there will be no question that I am quoting you properly, Mr. Alberts?

A. I remember that letter. I will never forget that letter.

Q. Now, that was not true, was it, at the time you wrote it?

A. It certainly was true insofar as what you knew about the matter, on the strength of your accusations to me, yes.

Q. Then you mean it is true, that from what Thomasma had told us we were not in a position to accept his un-
810 corroborated words hook, line and sinker, is that correct?

A. That is correct, insofar as you were directing your accusations against me and Snap-On now. I wasn't speaking for Mr. Larson.

Q. Now, in the middle of the last page of your letter, Mr. Alberts, you say:

"He"—meaning Larson—"is still entitled to counsel and I do not expect you will deny that the Bill of Rights and the Constitution of the United States afford him that privilege even if everything Thomasma has said should be taken as the gospel truth (which is quite a swallow for anyone)."

A. I said that.

Q. It would be quite a swallow for anyone, would it not?

A. Not the way you presented it to me, or Mr. Fidler. It was presented to me on the basis that your firm was satisfied and Mr. Wacker was satisfied—

Q. It was quite a swallow for you after you heard Thomasma's story, was it not?

A. No, sir. Your letter was quite a swallow to me.

Q. Now, let us just wait a minute, Mr. Alberts, and see if we can get along a little faster. Was this Thom-
811 asma's story quite a swallow for you?

A. No, I was convinced at that meeting—

Q. If you will just wait until I finish my question, please. I will give you plenty of time to answer, Mr. Alberts.

A. All right.

Q. At the time that Mr. Thomasma had completed his story before anything was said by Mr. Fidler about these alleged threats, wasn't his story quite a swallow for you?

A. No. I would say it wasn't quite a swallow for me, but it certainly was quite a swallow for anybody to take on the basis that you used that to threaten me and Snap-On Tools Corporation. That is precisely what I meant. I wasn't talking for Larson.

Q. You mean then it wasn't quite a swallow?

A. Not as far as Larson is concerned, no.

Q. Was it quite a swallow for anyone—you say Thomasma's story was quite a swallow for anyone?

A. No, I wouldn't say so. It was very definite, and Mr. Thomasma was very definite. He seemed to have full charge of all his faculties, not only that day, but in this Court, he knew what he was saying and he was pretty smart in what he was saying. He knew everything, he knew
812 more than I knew at the time the deposition was taken, and he knew such details that I didn't even know and which he certainly could not have known had he not been familiar with all the facts and known the facts and known what Larson had testified to.

Q. Then the sum and substance of your testimony, as I gather, with respect to your remark that it was quite a swallow for anyone, is that you didn't believe that when you wrote this letter?

A. I certainly did not intend to convey that information at all. I was saying precisely this, that on the basis of what Thomasma had testified to in Mr. Fidler's office you certainly, certainly had no basis upon which to accuse me or Snap-On Tools Corporation.

Q. Now, Mr. Alberts, let us get down to the question here of this letter in which you say that if everything Thomasma had said was taken as the gospel truth, that it would be quite a swallow. Now, is it quite a swallow to you or isn't it?

A. As far as Larson is concerned, no, it wasn't quite a swallow at all.

Q. Then you deliberately lied in this letter when you—

A. I didn't lie in that letter. Take your letter to
813 me and take my reply and you get the picture as far as I was concerned and Snap-On Tools was concerned. I wasn't—

Q. I will be very glad to get to that letter in a minute. Going back to the second paragraph on the second page, Mr. Alberts, you say:

"The only charge of wrongdoing thus far is at the instance of the self-confessed wrongdoer who doubtless is under even more duress than imposed upon the witnesses during the deposition and now being cast upon the writer and Snap-On Tools Corporation."

What basis of fact did you have for asserting that we were undoubtedly exerting duress against Thomasma?

A. Well, he had testified to his work in the Automotive plant, that he was what was then regarded around the plant as a key man, he had access to everything in the plant day or night, that he had available to himself equipment that he could take out of the plant. He admitted at that meeting when he was asked questions that there was some difficulty with Mr. Wacker, that he, Mr. Wacker, had discharged him, that he had taken some tools out of the plant and taken them to Mr. Larson to show him what Auto-
814 motive was doing, and to that extent that was sufficient for me to know that what he had done was certainly enough for you to demand anything that you wanted of him, and that is precisely what I meant by that statement.

Q. You don't believe that today, do you?

A. I certainly do believe that today.

Q. You have heard the testimony of Mr. Thomasma and Mr. Wacker?

A. I did.

Q. And you think they have perjured themselves in that regard?

A. No, I don't think they have perjured themselves, but I don't think the entire story came out in this court room.

Mr. Freeman: Will you use the "pre-trial deposition of Mr. Wacker" to make sure you are referring to something that has not taken place in the Court here?

Mr. Lindsey: Yes.

Q. When did you first learn, Mr. Alberts, that Mr. Thomasma had removed any tools from the plant of Automotive without authorization?

A. That was in the examination of Mr. George Thomasma in Mr. Fidler's office.

815 Q. Mr. Thomasma made that statement?

A. He had made a statement that he had taken some of the wrenches out and showed them to Mr. Larson. Now, I don't remember at this time whether he said he had

given a wrench to Mr. Larson that was never returned or that he had loaned him a wrench and he did return it. I won't go that far, but at least I will say definitely that he admitted he removed wrenches and other tools out of that plant without authority. He may have testified that he returned some of them. I don't know.

Q. Did he admit that he stole those tools?

A. No, he didn't use the word "steal." He said "without authority," that he had no requisitions for those tools.

Q. And that statement alone convinced you that we had used duress against Thomasma?

A. Plus the fact that he admitted that he was discharged by Mr. Wacker, that is right, for those things.

Q. You know he was discharged by Mr. Wacker because Thomasma had helped organize the Precision Company while in the employ of Mr. Wacker's company, do you not?

A. I didn't get that.

816 Q. I say, you know that Mr. Thomasma was discharged by Mr. Wacker because Mr. Thomasma had helped organize the Precision Company while Mr. Thomasma was still an employee of Automotive, did you not?

A. Mr. Thomasma testified on adverse examination that he did not admit that to Mr. Wacker at the time, so Mr. Wacker discharged him because he had taken tools out of the plant without authority, without a requisition.

Q. Now, you have referred a number of times to my threatening letter, and I will hand you a photostat, and one to the Court. I will give you the original, Mr. Alberts.

Now, Mr. Alberts, at the time I wrote this letter to you you had informed us that you were sending associate power of attorney to Mr. Hobbs in the Larson Interference?

A. Substitute power of attorney.

Q. Substitute, in behalf of Larson, had you not?

A. That is right. I sent you a copy of my letter to Mr. Hobbs under date of December 18th, and a copy of the substitute power of attorney, that is right.

Q. And Mr. Hobbs had told you when he entered the situation on behalf of Larson and Precision that he would only represent them in connection with the settlement

817 and not the Interference, did he not?

A. He may have told that to Mr. Larson, but he had no reason to tell me that, no.

Q. Well, he told you and Mr. Fidler and me at the con-

ference which we had with Mr. Hobbs on December 13th, 1940—

A. I don't think—

Q. May I finish—

A. Excuse me.

Q. —that if the Interference could not be settled he would not undertake the prosecution of the Application, did he not?

A. That was never discussed at that conference.

Q. He wrote you a letter stating that that had been discussed at that conference, did he not?

A. He wrote me a letter on December 18th, and I would like to refer to the letter. I don't remember it in the letter, but he may have—

Q. Well, you can refer to it.

A. I think that letter was offered here.

Q. That is the letter from Mr.—

Mr. Freeman: That is Defendants' Exhibit No. 67, the letter from Mr. Hobbs to Precision Instrument Manu-
818 facturing Company.

Mr. Lindsey: I am going right along. I will come back to it later. I can't put my hand on it. I will be glad to have you consider that later, Mr. Alberts.

Q. Now, at the time I wrote this letter to you of December 19th, Exhibit No. 68, the settlement negotiations had broken down, had they not?

A. I didn't know they did. I sent you a compromise offer of December 17th, 1940. I heard nothing more from it. You didn't tell me that you wouldn't accept that proposition, you just wrote that letter. That was your reply to my compromise proposition.

Q. Now, I hand you this letter which you have referred to, of December 18th, 1940, from Mr. Hobbs to the Precision Company. There is a mention of breakdown of negotiations in that letter, isn't that correct?

A. That letter came within an hour of the time your letter came to me. I didn't know—I wouldn't say it came before or after your letter. It came within a very short time of each other. I didn't know anything about it. Nothing was conveyed to me that there was a breakdown, except Mr. Hobbs' letter of December 18th, 1940 to Precision
and Kenneth Larson, which arrived at my office on
819 December 19th, and your letter to me, coming by messenger, very much together, I would say. I was very much impressed by that fact at the time.

Q. This letter to Precision, Exhibit 67, was received by you before you wrote this letter to me of December 19th, 1940, Exhibit No. 76, was it not?

A. I had both letters before me, yes.

Q. So that you did know when you wrote this letter to me of December 19th that negotiations had fallen down, isn't that correct?

A. That is right, as to that question, but you previously asked me whether I knew at the time that I received your letter whether negotiations had fallen down. My answer is still No, because I remember getting two letters—, the copy from Mr. Hobbs and your letter—very close to each other, and I won't say now that yours came before or after, but they were within a short time of each other.

Q. And you suspected some skulduggery between Mr. Hobbs and myself, isn't that what you are inferring?

A. I suspect nothing except that the pressure was pretty large on me at that time, and very emphatic and accentuated, I would say.

Q. Well now, at the time that I wrote you my letter 820 of December 19th and it was delivered to you, the Reporter whom you had engaged to take the testimony in the Interference had not transcribed all of the testimony, isn't that correct?

A. That is correct. Mr. Hobbs advised him, your letter so states there, I think—well, I know that there was an understanding between us that pending settlement, the Reporter should not go any further.

Q. Well now, as I recall—I forget the dates, I have got to get them from Mr. Fidler, but, as I recall, the testimony of Larson, who was the last witness, closed on November 4th, 1940, isn't that correct, Mr. Alberts?

A. Right after we returned from Judge Barnes' Court and received his decision, yes.

Q. And there was nothing about negotiations whatsoever for another month, isn't that correct, Mr. Alberts?

A. No, I wouldn't say another month. November 20th I told Mr. Fidler at his office that in view of what he has told me and in view of the fact that Mr. Wacker, he stated, would force the matter out in the open and the axe would pierce wherever it would fall, at that conference he so stated to me, that I would like for him to hold the whole matter in abeyance for one week until Mr. Johnson 821 could come in, and Mr. Thomasma. From that time on I gave him to believe that if Mr. Johnson and I had

the opportunity of hearing Mr. Thomasma that we would try to settle the matter, that we didn't want to have anything to do with it.

Q. Well now, did you tell the Reporter on November 20th, or November 28th, not to report any of his untranscribed notes?

A. I did not. He was so scared he wouldn't listen to me. I had Mr. Hobbs call him. I said, "You are attorney for Larson, you had better call him."

Q. Why was he scared of you?

A. Because he had received advances from me right along in excess of what his bill was, and he had delayed the testimony. I wrote him a letter, without any request on the part of Mr. Fidler—I returned from the east, the transcript was not in my office, I wrote him a letter, sent a copy to Mr. Fidler and asked him why it wasn't there, I wanted it, and Mr. Fidler called me up and said he appreciated very much the fact that I was in a hurry as well as himself to get that transcript. So I was pressing him very hard, I was getting very impatient with him. He gave me no really good excuse; and he was quite irritated with me, and he was afraid of me, and from what Mr. Fidler had told him and told me, he had already asked Mr. Fidler for twenty dollars, which I knew nothing about, and that was contrary to my understanding with Mr. Fidler, and I told Mr. Fidler that that was new to me, and he would get that twenty dollars from my office, and he so did.

822

Mr. Lindsey: May the Court please, I think much of these answers are not responsive, but I am inclined to leave the witness ramble on and tell his story rather than object, so that there won't be any further assertions by my honorable brother on the other side that we are supressing anything.

Q. But the fact remains that the Reporter had not transcribed a large portion of the testimony up to the time that I wrote this letter to you of December 19, 1940, isn't that correct?

A. That involves an interpretation of the word "large." I wouldn't say it was a large portion. Mr. Larson's testimony had been transcribed, as I remember, but—

Q. Was Carlson's?

A. No.

Q. Was Whitaker's?

823 A. No. Larson's testimony was the most important. Mr. Fidler asked for that, and I told the reporter to get that first.

Q. You heard Mr. Larson testify here on March 27th under the Discovery Rule that both Carlsen and Whitaker had perjured themselves, did you not?

A. I don't recall he mentioned their names, but he said practically all the witnesses perjured themselves, and then on cross-examination he admitted that Ladendorf and Blake's testimony was true.

Q. If you can just answer the question we will get along a lot better. I just asked about Larson and Whitaker.

A. I couldn't say yes or no.

Q. You don't recall that?

A. I recall him saying all of the witnesses' testimony was also false.

Q. You have a rather remarkable memory, have you not, Mr. Alberts? As I remember, you testified yesterday that when you sent Mr. Larson and Mr. Carlsen over to Mr. Hobbs, or rather gave him the name of some lawyers, you wrote the names you thought on a card about three inches by five—

824 A. Three by five, card I carry, and in answer to your question I will say I have a very retentive memory. Too much so for my own good.

Q. But you don't remember that testimony of Mr. Larson's that both Mr. Carlsen and Mr. Whitaker had perjured themselves?

A. I don't remember him specifying the names of witnesses. I remember him saying all the witnesses on his behalf falsified their testimony. If you give me the transcript I will be glad to look at it.

Q. And it is also a fact, isn't it, when I wrote you my letter of December 19th, 1940, that Zimmerman's time for taking depositions was running?

A. Yes, and I had asked for extensions and you could have gotten one very freely from me, several of them, if you wanted them.

Q. And you were in hopes, by delaying the transcription of the testimony and writing these numerous letters, that we would be required to ask for an extension of time to take testimony, and probably for several extensions in order that your clients Precision and Snap-On, or Snap-On

and its supplier Precision could continue to make this wrench which was clearly covered by the claims in
825 issue, notwithstanding that you knew that Larson's testimony was based on perjured testimony?

A. That is untrue.

Q. Now, you do know that you did instruct witnesses not to answer at times during the taking of those depositions?

A. I instructed them not to answer one question, and that was who the stockholders of Precision was. We had already gone five days and the expense of that record was getting too much out of hand, and I permitted the witness to answer as to who the directors were, and when you went into the stockholders I told Mr. Fidler I didn't know where this was going to end, and I would have to instruct the witnesses not to answer, and he said he would certify the question. I told him to serve notice and I would be glad to—

Q. And that was the real question, was it, about stockholders?

A. That was the beginning, or, I should say, that was about the time my patience was becoming exhausted with his fishing expedition about matters not germane to the Interference as I knew them then.

Q. And, as I recall, you testified yesterday that the question which was certified to Judge Barnes, that is, the
826 question upon which you had instructed the witness not to answer, had to do with who were the stockholders of Precision?

A. That is my memory now. I would be glad to look it up, if you want to know.

Q. You have a very retentive memory, have you, Mr. Alberts?

A. I think so, yes.

Q. Now, if counsel wish to check this with me—I show you the motion, or a copy, entitled, in this court, and in the Interference No. 77565, "Motion For Order Directing Witness to Answer Questions propounded on Cross-Examination," and this question, as set forth in your own memorandum—incidentally, that is your signature, is it not?

A. It is.

Q. —has to do entirely, has it not, to the construction of claims? Do you see anything in the motion or in the

memorandum about any question having to do with stock holders?

I wonder if you will admit that they are proper copies?

Mr. Ooms: I am sure they are, Mr. Lindsey, if you
827 tendered them. We have a copy here we would like to compare in the recess.

The Witness: This particular certification involved an interpretation of claims, but I had reference to and most likely had misstated the actual facts, that there was a question came up in the cross-examination as to whether or not Larson or Carlsen was to state who the stockholders were, and I refused to have them answer the question. That question, however, was not certified. That refreshes my memory, yes.

Mr. Lindsey: Q. Now, you had employed this reporter, had you not?

A. I did.

Q. Now, I referred to the obligations in this letter of December 19th, 1940. Aren't the only two obligations that I am calling upon you to perform in this letter these: First, to have the testimony transcribed and, second, to either remain attorney for Larson or properly appoint another attorney in your stead upon whom we could serve papers?

A. Why should I appoint an attorney for Larson?

Q. I am asking you if that letter does not require you or ask you to fulfil only those two obligations?

828 Well, if you want to take the letter to pieces, and I don't think any letter can be so construed, that is specifically what you asked for, but taking the entire tenor of the letter and all of the other threats involved, that was not what you were asking for.

Q. What other obligation do I recite in that letter or call upon you to perform, Mr. Alberts?

A. You called upon me, in the way I construed that letter in the light of what transpired prior to that, to sign the proposition that you submitted, and you were not listening to my counter proposition.

Q. Did I ask you in this letter of December 19th or demand that you sign that proposition?

A. Well, that is the way I construe it, and I would say that, reading the entire letter, that is what you were after, yes.

Q. And you also construed, inasmuch as I would not agree to your proposition, as set forth in a letter of yours

of December 17th, I was taking advantage of you, is that correct?

A. No, sir. You were trying to force the issue between Snap-On and Larson, and using what you had ascertained was a wrongdoing of Larson against not only Larson but Snap-On and myself, implicating me, as though I
829 was a party, having knowledge of what transpired there during the deposition.

Q. You deny that you had any such knowledge?

A. I not only deny it, but I refer to Mr. Fidler's statement and to the witnesses' statement, who are involved here, Mr. Carlson and Mr. Larsen, and Mr. Hobbs, who asked him that question, and he related to me over the telephone that they had definitely cleared me from any knowledge.

Q. What accusations was I making against you in this letter of December 19th, 1940, except asking you to observe and perform your obligations as attorney of record in the Interference?

A. You told me that I employed the reporter, that the reporter had not—

Q. Well, you had employed the reporter, had you not?

A. Just let me answer the question. That I had—the Reporter had not transcribed the testimony correctly, and that was my obligation, and that was not true. I had nothing to do with that reporter. It was the first time I ever employed him. I knew no more about him that you did.
830 Q. Mr. Alberts, do you think as an attorney—you are an attorney, are you not?

A. I certainly am.

Q. You are admitted to practice in the State of Illinois?

A. I am.

Q. Are you a member of any Bar Association, Patent Law Associations?

A. I am an ex-member of all of those Associations.

Q. Ex-member?

A. Yes.

Q. Are you a member of the American Bar Association?

A. I am an ex-member of the American Bar Association.

Q. And of the Patent Section, I suppose, of the American Bar Association?

A. An ex-member.

Q. Now, you know, do you not, that it is the duty of a lawyer who employs a notary and the notary does not tran-

scribe the testimony, it is the duty of that lawyer to use his best efforts rather than to appoint or attempt to appoint someone as his associate when he has already been informed that the associate will not act in that capacity? You know that, Mr. Alberts, just as well as I do?

A. I know that, and that testimony was accurately
831 transcribed.

Q. I am talking about the untranscribed testimony. Wasn't that your duty to continue to see that that was transcribed?

A. Up to that date you agree that Mr. Hobbs was given to understand that he was not to go any further.

Q. Well now—

A. And I was not representing Larson at that time. How could I make a demand on that reporter.

Q. You weren't representing Larson when, Mr. Alberts?

A. At the time I received your letter.

Q. You weren't representing him on December 19th?

A. I certainly was not.

Q. Were you representing him up to that date?

A. No, I wasn't. December 3rd I wrote your office a letter, that I withdrew. November 28th I said that I was withdrawing, and I was there on behalf of Snap-On and Snap-On alone. I think that was very clear and plain.

Q. Now, Mr. Alberts, you didn't formally withdraw ever from that Interference, did you, as counsel for Larson?

A. When I prepared a substitute power of attorney, that is the procedure in the Patent Office for withdrawing, yes, and I had no—

832 Q. You didn't file that, did you?

A. I couldn't file that.

Q. And you hadn't attempted to withdraw up to that time, which was December 18th, isn't that correct?

A. Well, we were in negotiations—

Q. No. I am asking you if you attempted to withdraw. Let's see if we can't—

A. Directly to the Patent Office, or in any other way?

Q. Of course, the only way you can withdraw—

A. That is not the only way, that is not the only way I know. I have never known an attorney who has formally asked the Patent Office to withdraw. Their procedure is entirely different than the procedure in a Court.

Q. Did you formally appoint anybody else in your stead or as your associate?

A. Mr. Hobbs.

Q. Prior to December 18th?

A. We had an understanding that he would get the substitute power of attorney.

Mr. Lindsey: May your Honor please, I will ask the witness to answer the question. That is an easy question, and I want to know whether this man ever filed in the Patent Office any paper withdrawing or appointing
833 anybody else in his stead to represent the party Larson in the Interference prior to December 18th, 1940.

A. I never filed such a paper in the Patent Office, no.

Q. So you had not formally withdrawn, isn't that correct?

A. I wouldn't so construe it. When I give a substitute power of attorney, that is the procedure among patent lawyers, and in the Patent Office the attorney who receives the power usually files it.

Q. Now, Mr. Alberts, you are willing to say on the stand here that you fully believed that you had withdrawn as the attorney for Larson in the Interference on November 28th, isn't that correct, 1940?

A. Yes. That was my intention and that was the way I construed by statements to Mr. Fidler, and in my letter of December 3rd, that I was no longer representing Larson, he was no longer consulting me, and as far as I was concerned he had another lawyer, and my hands were clear of Larson.

Q. Do you recall any correspondence and documents in evidence where, after November 28th, you still referred to yourself as attorney for Larson?

A. On December 19th I was not ready to leave Larson standing alone without an attorney and—

Q. You were still his attorney then, isn't that right?
834 A. On that day I was his attorney; until they went back to Mr. Hobbs, and he again took up the negotiations, that I didn't know that he would even see him after that.

Q. Just for an hour or two at your will?

A. No, I wouldn't say an hour or two. I will claim that I was his attorney for that day.

Q. Did he reappoint you as his attorney for that day?

A. No, I took that appointment voluntarily. I wasn't ready to let him stand alone.

Q. Now, let us consider this letter of mine of the 19th a little further. What part of this letter is a direct accusation or charge against you?

A. "In the second place, we do not believe that you can divest yourself of all responsibility in this matter. You are still the attorney of record. Snap-On still has legal title to the Larson Application in Interference."

Q. Let me interrupt. So far that is true, isn't it?

A. No, that is not true.

Q. What part isn't true?

A. Where you make reference to me as the attorney for Larson.

"You took the deposition on behalf of Larson. You 835 instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent, and searching questions asked on behalf of Automotive."

That was a threat.

Q. Those questions were searching, as you found out now, were they not?

A. They were searching, way beyond the scope of direct examination, yes.

Q. But they were searching, now, in your mind, in view of Larson's confession to you that he had committed perjury, are they not?

A. Yes, they were searching. They were searching then and they are searching now, as I remember that.

Q. I will proceed now. What—

A. "You employed the reporter."

Q. That is true, isn't it?

A. That is true, but let us not quibble about a few words. Let us take the entire expression. I can't interpret a letter just by one word, nor a contract by one word. I have to construe the entire document.

Q. I would like to know what part is true and what isn't, as we go along.

836 A. I can't—

Q. Answer the question. I can't argue with you.

A. "Part of the transcript was not reported correctly," —up to that, that is not true—"very fully. The reporter delayed in transcribing part of the record."

That is an inference that I had something to do with it.

"You must recognize that a large part of the testimony

taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation so far as it has developed, and I assure you that there are further developments still to be revealed."

I had never seen those developments or heard of them.

"You and Mr. Johnson should, if you do not, realize that you are holding up the issuance of the Zimmerman patent without the slightest justification."

That is untrue.

837 "I do not consider your quarrels with Precision as being any justification."

That is untrue. Our participation in that Interference was not a quarrel with Precision. It was a quarrel with Automotive.

"Automotive is not interested in that matter."

I don't know whether that fits at all.

"You cannot shift your responsibility to Mr. Hobbs."

I was not trying to shift my responsibility to Mr. Hobbs. I never asked Mr. Hobbs to represent me or my conduct or defend my conduct in that Interference.

"We in Automotive do not propose to permit your or your client Snap-On to divest yourselves of responsibility."

That is not true. We were not trying to divest ourselves of responsibility.

"We simply refuse to permit Automotive to be the goat."

That is untrue, as far as Snap-On is concerned and as far as I am concerned.

"You have asked Mr. Hobbs to notify Mr. Fidler to direct all future notices to Mr. Hobbs rather to you."

838 I sent Mr. Hobbs a substitute power of attorney. I don't interpret that as the equivalent of sending that substitute power to Mr. Hobbs. It was understood at the very beginning he could have it any time he thought he would want it.

Q. But he said he didn't want it, hadn't he?

A. Not up to that time.

Q. All right. Proceed.

A. Not at the time I received the return of it. I didn't know of it anyway.

"We intend to continue to direct all notices to you until you have formally withdrawn as attorney."

Q. You were finding fault with us there for directing communications to you?

A. I certainly was. You should have sent me a notice as attorney for Snap-On, being assignee of record, and corresponding notices to Mr. Hobbs as attorney for Mr. Larson.

Q. Even though he wasn't of record in the Patent Office?

A. That wouldn't make any difference.

Q. You know that wouldn't be recognized in the Patent Office, Mr. Alberts. Don't try to deceive the Court.

839 A. He had a substitute power of attorney and could file it at any time.

Q. Don't try to deceive the Court.

A. I am not trying to deceive the Court. I am trying to tell the truth.

Q. Isn't it a fact that the Patent Office won't recognize the signature of a lawyer who is not of record in a case any more than this Court will in a suit, isn't that right?

A. They will hold the document and ask for a power of attorney, and ask when it will be forwarded. They will not return the document.

Q. You think we should send it to somebody that won't act as attorney, and not to you?

A. It wouldn't do any harm to send us both notices. That is the way to do it.

840 Q. Now, Mr. Alberts, have you the copy of my letter to you of December 19th, Exhibit 76, the one that we have been talking about, or, rather, your letter to me, I should have said, of December 19, 1940. I think you have the original right here.

A. I don't think I finished with this other letter.

Q. I don't know what the last question was now; I think you had finished, however.

The Court: He was down pretty nearly through that letter. You were asking him what his conclusion was about the statements contained in your letter. He had gone over the first two pages.

Mr. Lindsey: Q. Is there anything else you would like to add?

The Witness: A. I would like to read through the letter; that is the question I was asked. I don't think I finished this letter.

The Court: No, you did not.

841 The Witness: We were talking about "We intend to continue to direct all notices to you until you have formally withdrawn as attorney; and even then, we do

not propose to permit you to evade any obligation which you have up to that date incurred."

My answer to that is, I discharged my obligations up to that date; and the inference was to the contrary.

With respect to transcribing Larson's record, I think I say the following in my dealings with Mr. Hobbs: "Mr. Fidler did advise Mr. Hobbs that those portions of the testimony which had not been transcribed as of December 2, 1940, could be held up, because it appears that settlement was very likely." That is correct. "I understand that Mr. Hobbs so informed you." That is true. "Of course, it was understood by everybody that, when the settlement fell through, the transcript would be promptly completed."

Q. Was that true?

A. That was true. And my answer to that is that I would see that whatever I could do about it, rushing it through to completition, would be done by myself. There was no opportunity; the settlement was effected the next day.

"That is your definite obligation, and we are looking only to you to perform that obligation." Within the 842 time allowed, I had performed that obligation.

"I am enclosing an extra copy of this letter, which I would appreciate if you would send to Mr. Johnson of Snap-On, so that Mr. Johnson would know exactly what Mr. Wacker's position is, as we wish to avoid any misunderstanding between them." I received a copy of your letter, which was also signed by you, and did forward it to Snap-On Tools Corporation, with a forwarding letter and with a copy of my reply to this letter addressed to you. And that occurred on December 19, 1940,—it was placed in the mail.

Q. Have you finished your answer, Mr. Alberts?

A. I have.

Q. Now going back to the second page for just a moment: I say in the letter to you, "I do not consider your quarrels with Precision as being any justification." That is for holding up the issuance of the Zimmerman patent. What quarrels was I referring to there?

A. Where is that?

Q. In the middle of page 2; what quarrels was I referring to?

A. We had no quarrels with Precision. You were referring to the fact that Mr. Larson perjured himself, and you

gave us knowledge of that fact. When we discovered
843 that, we promptly expressed ourselves to the effect that from there on we would only be interested in carrying on any further inter-communications on behalf of Snap-On, and that I was Snap-On's attorney and Snap-On's attorney alone. I do not see any justification for that.

Q. Well, now, you had no quarrels; but you did have a difference of opinion about settling this Interference, did you not?

A. We never expressed a difference of opinion between ourselves. I told Mr. Hobbs that anything within reason would be recommended to Snap-On by myself; and if I recommended it, I am sure they would go through with it.

Q. Didn't Mr. Hobbs recommend that Snap-On accept the proposition, that Precision and Larson were willing to entertain it, but you were not willing to agree to it; isn't that a fact, Mr. Alberts?

A. That is not a fact. My entire quarrel at that time was whether Snap-On should concede validity of all of the claims then allowed, or that may hereafter be allowed, and also agree not to infringe. I never, and I so told Mr. Fidler, permitted a client of mine to subscribe to any such restriction; and I did not see any reason for it then, because we were not involved. And that was the primary quarrel at that time.

844 Q. Now I will ask you to examine the letter which you wrote to Mr. Fidler dated December 17th, the letter being Defendants' Exhibit 73?

A. That is right.

Q. And I will ask you if that is not a long letter about a different proposition that had been submitted, and that that letter was received by me the day before I wrote you my letter of December 19th, about which you have been testifying.

A. Repeat the question.

(Question read by the reporter.)

A. There is no difference of opinion between Snap-On and Precision. I said everything in there was subject to the approval of Precision, of Larson. We had no difference of opinion; that was Snap-On's proposition, solely.

Q. Well, now, Larson had filed an application as the sole inventor, has he not, through you?

A. Filed two applications through me.

Q. Well, I am speaking about the one that is referred to in this letter, Mr. Alberts.

A. The second Larson Application.

Q. All right, the second Application, then; is that clear?

A. That is right.

845 Q. Can you answer the question now?

A. Will you repeat the question?

(Question read by the reporter.)

The Witness: A. Your question is not entirely clear to me.

Mr. Lindsey: Q. I think there was another question; let me save time and repeat the question, if I may: Larson had filed the second Larson Application in his own name, had he not?

A. That is right.

Q. And that was another mistake, was it not?

A. That proved to be a mistake, from what knowledge I subsequently learned, yes.

Q. And then you proposed to re-file that application, either as a sole application on behalf of Walrayen or a joint application in the name of Larson and Walrayen; is that correct?

A. Not entirely; I proposed to re-file it as a joint application, never considered it as a sole application of either one of them.

Q. And you were considering that proposition, were you not?

A. No; Precision through Larson had already acknowledged that my recital of facts were correct, and he was 846 in agreement with those. That was never a quarrel between Precision and Larson on the one hand and Snap-On on the other hand.

Q. Now will you please refer to the third page of your letter to me, of December 19, 1940, Exhibit 76; and I will read the portion as I wish to—

A. May I have the original, please?

The Court: Here is a copy of it.

The Witness: All right.

Mr. Lindsey: Q. You say, "I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker." And then you go on, you say this: "Definitely present corroboration of the competent type, with sufficient competency to outweigh Larson and his cor-

roborators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any phase of the case for the present."

Now, Mr. Alberts, isn't it a fact that there you are telling us to go ahead and take testimony on behalf of Zimmerman, to establish Zimmerman's dates, notwithstanding that you knew that the Larson testimony was perjured?

A. Please repeat that question.

847 The Court: I gave you the wrong letter, didn't I? This is the letter you are talking about; are there two letters of December 19th?

The Witness: A. There is only one, but I didn't find the place he was reading from.

Mr. Lindsey: Q. Here at the bottom of page 2. Read the question.

(Question read by the reporter.)

The Witness: A. I was merely telling you that on the basis of what I heard and what you knew, bearing in mind that what Larson had said to me was confidential; you had no right to make those accusations.

Q. You felt no obligation, as an attorney, to instruct your clients to concede priority of the invention; is that correct?

A. I did so instruct my client; and I offered a concession of priority in behalf of Snap-On. I told you that Snap-On would recommend that to Larson, and that without question Larson would do what Snap-On wanted. But after your letter, threatening me and Snap-On Tools Corporation, as far as we were concerned, and ignoring the confidence, the knowledge I procured through a confidential relationship,

848 I had every right to disregard what Mr. Larson told me; because he actually was telling me that at the moment I was withdrawing, or just prior to the time I withdrew as his attorney. And whatever he told me had no bearing upon what I was saying on behalf or in answer to what you were accusing me of.

I still repeat that that is a justifiable position, a very honorable position for an attorney to take with respect to his client. I had no duty as a lawyer to disclose or reveal a wrongdoing on the part of my client.

Q. Now Mr. Alberts, you are familiar with Patent Office practice, and the rules of practice, are you not?

A. I formerly was an examiner in the Patent Office.

Q. You know this, do you not: That the rules spe-

cifically and unqualifiedly provide that an interfering party; that is, an applicant whose application is in Interference may at any time terminate the Interference by filing in the Patent Office a concession of priority, with the consent of his assignee if any; and the opposing party has nothing to say about it and can do nothing about it; isn't that a correct statement now?

A. That is a correct statement; and I recommended that procedure to Mr. Hobbs when everything went blank.

Q. And you did not follow through on that?

849 A. I was not Mr. Larson's attorney, and I could not file a concession of priority on behalf of the assignee without Larson's consent, especially in view of the fact it was really his invention and not ours; we merely had it as security. That would be a travesty on justice, to deprive Larson of whatever rights he may have thought he had at the time. We were in no position to do that, especially in view of our contract of September 28, 1938. I would like to have done that, and would have done that had I continued to represent Mr. Larson.

Q. And you did not continue to represent Mr. Larson?

A. I did not.

Q. After what date?

A. After November 28, 1940.

Q. Now, that is aside from any formal wthdrawal, any formal paper filed in the Patent Office; is that correct?

A. I am not quibbling about words; I wrote Mr. Fidler, I told Mr. Larson to get another attorney, and he did. And as far as I am concerned, from there on I was not his attorney; he had another attorney.

Q. Well, now I will hand you Defendants' Exhibit 69; and I will ask you to look at the last paragraph, on page 1. Now, that exhibit is a letter from you to Mr. Johnson
850 of Snap-On, and is dated December 19, 1940; is that right?

A. That is right.

Q. And in the last paragraph you say—now observe carefully, if you will just follow it, so there won't be any question—"I stand on record in the Patent Office as attorney for Larson as well as your firm. I cannot very well at this moment withdraw and leave Larson to the unmerciful tactics of AMMCO and their attorneys." So you were attorney at that time?

A. I previously testified that I will take the responsi-

bility for being his attorney on the day of December 19, 1940, when Mr. Hobbs returned the substitute power to me and in a letter to his client expressed the fact that he was withdrawing as their attorney. And I was not leaving him alone; that is true. But I did not get the consent of Mr. Larson on that day to file a concession. I told him that I could be of assistance to him, if he was willing to face the music on that day; and he was not willing to do it.

Q. You verified the Third Amended Petition of Snap-On?

A. I did.

Q. Did you not?

A. I did.

851 Q. And do you recall that you alleged that in order to procure Larson's release from Exhibit 5 agreement from Snap-On, Automotive threatened Snap-On and you with the crime of possession and concealing knowledge of the commission of perjury by Larson and others on his behalf?

Q. Now, when did we accuse you of that, on what dates?

A. Well, your letter of December 19, 1940 to me contains a recitation of a series of threats. That is the way that read to me; that is the way I construed it then, and that is the way I construe it now. On the basis of that letter alone, I felt justified in making that allegation.

But besides that, besides that, on November 20, 1940, Mr. Fidler, after stating all the facts to me and after asserting that he had the evidence of Larson, that if this matter was not settled he would have to force the matter out in the open, and the ax could pierce wherever it fell,—those were his words. Again, on November 28, 1940, in Mr. Fidler's office, in the presence of Mr. Wacker, Mr. Allen, Mr. Johnson, and myself, before Mr. Thomasma was called in, the charge was made that Snap-On is Precision and Precision is Snap-On.

That was a threat. And that it had transpired that 852 we had knowledge of that perjury. That was a direct threat to myself and also to Snap-On. And then Mr. Fidler went on to say Snap-On's hands are not entirely clean in this matter either. And that was a direct threat to Snap-On Tools Corporation; and if Snap-On Tools Corporation's hands were not clean, my hands were not clean either. What they knew, I knew; and what I knew, they knew. That was another threat.

Q. And what Larson knew, you knew?
A. No, definitely not.
Q. Go ahead.
A. When I went down to Snap-On Tools Corporation on November 29, 1940 to report to the executives and their associates in that conference there I rehashed the entire matter from the inception of their relationship with Snap-On; and I then repeated the remarks which I just have given, about the threats that have been made. That was a direct threat to me; it was a direct threat to Mr. Johnson; it was a threat to their entire organization, or those responsible for it.
Q. When was the next threat made?
A. There were threats, direct and indirect, in our negotiations. The entire conduct of the negotiations were such that they were conducted, with the knowledge on the
853 part of everybody concerned,—and I mean everybody —that perjury was present; it was a distasteful case; and all of the negotiations were predicated on that fact, and that fact alone. It was no secret to anybody.
Q. Do you state that to be a fact?
A. I state that to be a fact; there was no secret about that. Then when negotiations blew up,—
Q. Haven't you answered the question yet?
A. You asked me what threats; I am giving you the series of threats.
Q. All right; that is all I want. I don't care whom you told them to; I want to know what the threats were.
A. Then, when negotiations blew up several times,— and I might say that Mr. Hobbs' contacts with you were more frequent than mine; it appeared that way, anyway—
Q. You are sure of that, are you?
A. I am not sure of it.
Q. How many contacts did you have with Mr. Hobbs?
A. I don't know; I had two contacts with you.
Q. How many did you have with Mr. Hobbs?
A. Over the telephone, as well as in person?
Q. Personal.
A. In person?
Q. Yes.
854 A. Excluding the telephone calls?
Q. Yes.
A. Well, I would say at least three.—
Q. And how many telephone calls?

A. Wait a minute; excuse me. I would rather recite the times, I cannot count them in my mind. Mr. Hobbs was in my office the first time negotiations blew up; and we discussed the matter. He was in my office December 19th. I was in his office on December 13th. I was with him in your office on December 20th. That makes four contacts; and I had another contact with him in my office, when he tried to get me to go over, and I finally did go over.

Q. How many personal contacts do you think we had with Mr. Hobbs?

A. I am not going to even make a conjecture on that; I don't know.

Q. You were just guessing, then, when you said we had more contacts,

A. I meant personal and telephone.

Q. How many telephone contacts did you have with Mr. Hobbs?

A. I would say at least five of them.

Q. Now, in this letter of yours to Snap-On, of De-
855 cember 19th, in which you enclosed a copy of mine, you say, "I consider his—", that is my letter—"as another example of the type of blackmail which Thomasma no doubt is confronted with." Do you have any basis for saying that we were blackmailing Thomasma; are you in the habit of using those words?

A. No, I am not in the habit of using them; and I am not in the habit of receiving the kind of letters you sent me.

Q. What is your justification for saying we were blackmailing Thomasma?

A. When I was called in to Mr. Fidler's office on November 28th, he was asked questions relating to his position with Automotive. He testified that he was regarded as a key man in the Automotive plant; he had free run of the plant, could go wherever he wished, whenever he wished, day and night; that he had contact with Mr. Zimmerman, the engineer, and had a right to make suggestions to him; and that that was part of his work.

In other words, that in a small measure he had done some developing work in the plant. And that he had the right to sell equipment for Automotive Machinery Co. He stated that he had sold some to Larson, that he took
Larson into the plant at night; that he delivered
856 merchandise to Larson at night.

He also testified that he had taken out tools, with

the authority and free runs of the plant that he had, which he should not have taken out; and that Mr. Wacker called him to account in that regard, and also called him into account in regard to his alleged connection with Precision.

He at that time denied that he had any connection with Precision, to Mr. Wacker. I am just repeating his testimony. That Mr. Wacker then and there summarily dismissed him, because he had taken tools out of the plant, and he so testified he had given at least one of those tools to Mr. Larson.

With that information, I felt the fact that he had at least one-third of the stock of the Precision Instrument Manufacturing Company, and was placed in a position where he was rendering that stock worthless, that there must have been, there could not otherwise have been anything but the most unusual pressure on him, and they had the goods on him. That was my conclusion, and on the strength of that, and what I heard there, I feel that I had every right to advise my client about that.

That, too, I consider a privileged communication. That was enough for me.

857 Q. Now, then, your position is that Wacker or Mr. Fidler or I held this over Thomasma's head and made him come in with his story; is that the blackmail?

A. I was communicating that to my client, in confidence.

Q. I am asking you what this blackmail was.

A. Your letter to me, that was my blackmail; that is what I was referring to.

Q. Let us keep to the blackmail that you were referring to here, the blackmail that Thomasma is confronted with. Who committed that blackmail; let us bring it out, get it out in the open. Your counsel said we are going to put everything on the table; put it on the table.

A. Let me read that statement; I think I have answered your question.

Q. Well, you have said enough to answer it; but I don't think you have answered it.

A. That is where we disagree.

Q. Well, who committed the blackmail?

A. I said I considered this letter, and I am referring to your letter of December 19, 1940, as the type of blackmail which Thomasma no doubt is confronted with. And I was making a comparison, and that is true.

858 Q. All right; you don't want to answer. Let me have it. Now, the Larson patent suit issued on a certain feature, did it not; that is, the claims were limited to a certain feature—let me restate it: The patent that issued on the Larson Application in the Interference contains claims limited to a certain feature; isn't that correct?

Mr. Freeman: I thought we were not going to go into that.

Mr. Lindsey: I don't want to analyze the claims; I just want to find out what is Thomasma's and what is Larson's; I am not going to ask any interpretation of the claims; just one question. —

Q. Can you answer the question?

The Witness: A. I want to answer that question, and I want to qualify that question; because there are two stages of prosecution.

Q. I am speaking about the claims for the patent issue.

A. My answer to that is no; you are suing him on the face of the claim, after the application went in; and that is not limited to a specific feature.

Q. All right; claims filed in the original are limited.

A. That is precisely true.

Q. Who, in your judgment, was the inventor of that feature, Thomasma or Larson?

859 Mr. Freeman: I don't see where that makes any difference at all, as to who is the inventor.

Mr. Lindsey: Just a moment; this is cross-examination.

The Witness: A. That is asking for a conclusion, but I am willing to give it.

Mr. Lindsey: Q. Yes.

A. Summing up all of the testimony given in this case, both in the adverse exaymination and the testimony that was given by Thomasma on November 28, 1940, in the presence of Mr. Johnson and myself, Mr. Wacker, Mr. Allen, the testimony that was given on this stand by both of the adverse parties there, I would say that the best, the very most liberal interpretation could be that that should have been a joint application of Larson and Thomasma.

Q. Now, as I understand your testimony that you have given, you always considered that there was no relationship between Snap-On and Precision, other than that Precision was supplying wrenches to Snap-On under a contract; is that correct?

A. That is correct; and I would rather state it this way:

There was only a relationship of commerce; that is about what describes that relationship the best way I could put it.

Q. And Snap-On had nothing to do with the in-
860 ternal organization, or the stock control, or anything of that sort, of Precision; is that correct?

A. Definitely not.

Q. At no time?

A. At no time.

Q. You had nothing to do with anything of that sort personally, did you?

A. That is true.

Q. And that condition has existed even during the Interference and the settlement, and for months after that; and to this day; is that correct?

A. That is precisely correct.

Q. There is no question in your mind about that?

A. None whatsoever.

Q. Now, did you ever blame any one for having spoiled Larson's chances for not prevailing in the Interference; that is, other than Mr. Fidler and myself?

A. I never blamed any one for spoiling his chances of surviving that Interference; he had no right to survive in that Interference.

Q. Did you ever criticize any one for taking any part in that Interference, and that it resulted adversely to Larson, so far as the Interference was concerned?

861 A. You mean to the extent of a concession of priority?

Q. Or otherwise; did you ever criticize anybody's participation, other than Mr. Fidler's and mine, as to this compounding of a felony?

A. I have never criticized anybody, other than Automotive and their agents and attorneys.

Q. Did you ever accuse any one of cutting off their nose to spite their face, with respect to Thomasma having made this affidavit?

A. No, sir.

Q. You never said anything of that sort?

A. No, sir.

Q. You never wrote anybody that?

A. Not to my knowledge.

Q. And you never criticized any one connected with

Precision, or otherwise, for giving us information leading to Thomasma's affidavit; is that correct?

A. I never have.

Q. You are sure of that?

A. I am positive of that. Wherever the truth is, it should be revealed; that has been my position, and shall be my position.

862 Q. Did you ever tell or write any one, after the agreements were entered into,—I am speaking of the agreements involved in this litigation—that you learned from Thomasma that Larson was the inventor, and not Thomasma, of the major portion of the wrench in question?

A. Repeat that question.

(Question read by the reporter.)

A. I would have to limit that as to time; on November 28, 1940, Thomasma made the statement, after reciting the facts, that Larson did most of the work on the wrench; that that portion of the wrench which involved the placing of the indicator beyond the point of pivotal movement of the beam, thereby translating the movement or flex of the beam to a point where it could be accurately registered and thus give better performance,—I at that time construed that Thomasma admitted that that was Larson's invention. But that is not how the claims read in the issued patent.

Q. Then you never told any one that?

A. I may have, yes; reported that much. As of the information I received on November 28, 1940 from Thomasma. But from what he has since said in this court and on adverse examination, and in his affidavit, I would certainly change that conclusion.

863 Q. Now, Mr. Alberts, I show you a letter, the original dated January 31, 1941, from Harry C. Alberts to David M. Krichiver; is that your letter?

A. That is.

Q. And you admit you sent that letter?

A. I do admit.

Mr. Lindsey: I would like to read this letter, may your Honor please, for the record. Will you do that, Mr. Smith, read this for me?

Mr. Smith: Letter addressed on the stationery of Harry C. Alberts, bearing the signature of Harry C. Alberts, dated January 31, 1941, addressed to David M. Krichiver, Esquire, Attorney-at-law, 139 North Clark Street, Chicago,

Illinois: "Re Precision Instrument Manufacturing Company—File 11595—"

(Said letter was thereupon read by Mr. Smith.)

Mr. Freeman: Do you happen to have the letters of April 27, 1940, July 15, 1940, December 10, 1940, January 9, 1941, January 29, 1941?

Mr. Lindsey: Well, I have carbons of them.

Mr. Freeman: May we have them?

The Witness: Am I under questioning now, regarding that letter?

864 Mr. Lindsey: Q. No, I asked you if it was your letter.

A. Yes, it was.

865 Q. Now, what was the occasion of this letter which you admit was rather sharp, do you not?

A. Well, I am not going to put any construction on your words.

Q. What was the occasion of writing this letter?

A. The purpose of that letter was precisely what I have testified to a moment ago, that as far as up to that time, January 31, 1941, which was prior to the date that Thomasma testified on adverse, which was prior to the time he testified in this court, and the only knowledge I had was the knowledge he had given on November 28, 1940 in response to the questions of Mr. Fidler, and then he acknowledged that the greater part of the work on that wrench was done by Larson; that Larson's idea was to place the indicator in the handle end of the wrench, put an extension on the flexible beam to translate the flex of the beam to such an extent that a more accurate performance could be acquired in taking measurements or viewing the indicator to register those measurements; that that part of the wrench was his invention.

And I still say that that part of the wrench should be issued to Larson on his application in the Interference but that application through Thomasma's efforts went, and

866 I say unjustifiably went, to Automotive.

That was the purpose behind that letter and I still repeat what was said in that letter.

Q. What was the occasion of the letter, I am asking you.

A. Larson came down to me and showed me copies of these letters, or perhaps, they were originals. I don't remember now. They were most likely originals.

Q. What was in the letters that occasioned this, if you recall?

Mr. Freeman: You have the carbon.

Mr. Lindsey: I want to test his recollection.

Mr. Freeman: All right.

The Witness: A. He was accusing Larson of everything that possibly a major stockholder and director and managing director of a corporation could be accused of and it appeared from that letter, from those letters, that he was trying to subject them to such pressure that they would pay him more than the stock was worth.

And he conveyed to me the fact that under those circumstances that he was being hindered in the production of wrenches, that Snap-On and his contract could not possibly be fulfilled if they were going to have that internal
868 difficulty with a five-share stockholder, would I be of any help?

And I called Daniel and told him about it and I might say prior to that time we were advised a good many times they were having this trouble with Krichiver and Krichiver called me on one occasion before the settlement and tried to come over to see me and I made an appointment which he never kept and I called Mr. Daniel and asked him whether or not I ought to help Precision try to straighten out that particular difficulty which Larson says was interfering with his ability to perform under the contract and their production was suffering.

Every time they got going Krichiver would come over and order a stockholders' meeting, a special meeting, order this and that, he couldn't cope with it, and would I help.

They said whatever I could do; I should do, and, to that extent, the letter is very expressive on the point it was written entirely to protect such rights as Snap-On has under the terms of the then existing agreement.

Mr. Lindsey: I think after that I have almost forgotten the question but I think the question was, what was in these letters Mr. Krichiver wrote that called for that letter of yours.

868 The Court: Give him the letter. We are not going to stay here forever.

Mr. Lindsey: Q. Were there any accusations in any of those letters?

A. Yes, in the letter of July 15, 1941, Mr. Krichiver says this:

"I think it would be to your best interest to see me at which time I can outline to you my future course of action."

That, coupled with what they told me had been going on there, was plenty.

The letter of December 10, 1940, makes the general accusation:

"if any meeting was held,"

I am only reading part of the letter.

"and that until such time as he receives a copy of the minutes of that meeting, if any was held, he does hereby object to each and everyone of the acts of the board of directors, and he will so continue to object to each and everyone of the acts and deeds of the board of directors which supposedly took place on November 16, 1940."

869 Q. That was because he wasn't given notice of that meeting, wasn't it?

A. I don't know. He didn't so state in there and he must have had knowledge of it somewhere or other. He must have received notice, otherwise he wouldn't have written about that meeting.

Here he is telling that what the by-laws of the corporation require about annual meetings, stockholders' meetings, tells them about the law of the State of Illinois providing notice of date and place shall be given at least ten days prior to such meeting; as yet he had not received such notice, which should be called for January 13, 1941.

Then he ends up by saying this:

"I am hereby making demand upon you to arrange for said meeting, and advise me of the date thereof. If I do not hear from you within the next few days, I shall take such action as is available to me."

Then on January 29, 1941, he says:

"As a stockholder of the Precision Instrument Manufacturing Company, I am hereby making demand upon you to turn into the corporation for cancellation the 260 shares of stock you now hold in the Precision Instru-

870 ment Manufacturing Company on the grounds that there is no consideration given by you for these shares."

Now, he is writing to Kenneth Larson and he wants Larson to turn in his shares of stock.

"Should you fail to turn in your stock for cancellation within the next three days, I shall file suit against you on behalf of myself and the other stockholders similarly

situated and the corporation to enjoin you from acting for and on behalf of the corporation and to have the court cancel your holdings."

Then on January 29, 1941, he again wrote Walter Carlsen:

"I have this day made a demand upon Kenneth Larson to turn into the corporation for cancellation the 260 shares of stock which he holds on the grounds that said stock was issued to him without consideration.

"I am hereby requesting you as secretary and treasurer of the corporation to request Mr. Larson to turn in his stock for cancellation on the same grounds.

"In the event Mr. Larson's shares of stock are turned in for transfer on the books of the corporation, you are hereby notified to refuse such request on the grounds that said
871 stock had been issued without consideration and are therefore null and void, or be personally liable for those shares.

"I have advised Mr. Larson that if he fails to turn in his stock within the next three days I will institute a suit against him enjoining the transfer of the shares he holds and asking the cancellation of the shares issued to him.

"I am still awaiting notice of the annual meeting of shareholders, which according to the by-laws of this corporation should have been held on the second Monday of January. If I do not hear from you within the next few days concerning a meeting of the shareholders, I shall write the other stockholders and arrange a meeting as provided for in the by-laws and in the statutes of the State of Illinois."

Those were the letters Mr. Larson brought to me and, I might add, they were not charged for services for that letter; Snap-On Tools Corporation paid for it.

Mr. Lindsey: I will offer Mr. Alberts' letter to Mr. Krichiver of January 31, 1941 as Plaintiff's Exhibit 20.

Mr. Freeman: I object to this. They have no materiality in the case to the issue. They were only put in to
872 test this man's memory and I think he has done a good job of proving he does have a retentive memory. They are not material to this case.

The Court: I don't think they are material but I don't know. Let them go in.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT No. 20.)

Mr. Lindsey: And I will offer the copies of the letters which Mr. Alberts referred to and which are identified in his letter of January 31st as Plaintiff's Exhibit 21.

Mr. Freeman: Are you putting them all in collectively as 21?

Mr. Lindsey: Collectively, yes.

(Said documents were thereupon received in evidence by the court and marked as PLAINTIFF'S COLLECTIVE EXHIBIT No. 21.)

Mr. Lindsey: Q. Now, I believe you said you recommended that Larson concede priority and Snap-On was willing to do that, is that correct?

A. That is right.

Q. Did you make that proposition to us?

873 A. To whom?

Q. To us, Mr. Fidler and me.

A. It is in my letter answering yours. I certainly did.

Q. But you attached quite a few conditions to that, did you not?

A. You never even considered that. I did attach some—

Q. I am asking you if you didn't attach some conditions to this letter you referred to and that is the letter of December 17, 1940, is it not, Defendants' Exhibit 73?

A. That involved something more than the concession of priority. I can't answer that yes or no. I offered a concession of priority. That is all you were entitled to and all you should have asked for.

Mr. Lindsey: If your Honor please, I think this witness of taking an awful lot of time.

Q. Did you ever submit a written concession of priority?

A. I had no power to do that. When I learned the facts on November 28th, I withdrew for Larson. I couldn't do that. All I could do was consent to it. I offered to consent to it and Mr. Johnson confirmed that.

Q. Now, in your memorandum of December 18, 1940, covering the November 28 conference, you said:

874 "Up to the time of submission of this agreement,"

That was on December 13th.

"the question was always put to me as to whether or not we would permit Larson to concede priority of the Zimmerman Counts in Interference."

Do you recall that statement?

A. I would like to read it and see what other statements are in there. Where were you reading?

Q. I am trying to find it. I will have to check that up or come back to it.

Now, wasn't that all we had been demanding was a concession of priority?

A. No, up to that time I did not get any special demands.

I offered to see you got—that Automotive got a concession of priority and the reply was Wacker wouldn't be satisfied with a mere concession of priority, he spent $5,000 investigating these people, and he wants some substantial settlement, and he wants it promptly. That is all that was said.

Q. Didn't you write me in your letter of December 19, 1940, Defendants' Exhibit 79, on Page 1, after you refer to the December 13, 1940 conference:

"The only concession demand made known to me and
875 Snap-On Tools Corporation up to the time of that conference was a concession of priority of the claims in Interference."

Don't you say that in the letter?

A. Yes, sir, and that means just what I stated. I offered the concession and there was no definite counter-demand.

Q. "The only concession demand made known to me." Who made known to you?

A. I made it known to you.

Q. You say, "The only concession made known to me." Who made it to you?

A. I made it to you. You never replied to it.

Q. I don't understand the language:

"The only concession demand made known to me." You were writing the letter. Who made that concession demand to you, Harry C. Alberts?

A. My answer is still the same. I offered a concession priority. That was the only demand known to me except that general reply, Wacker wants a certain settlement and he wants it promptly, and I still say that was the only concession demand known to me then.

Q. I now refer to your memorandum of December
876 18, 1940 which covers this conference in Mr. Fidler's room on November 28, 1940.

A. No, it covers more than that.

Q. It refers to it, doesn't it?

A. Yes, sir.

Q. You are not going to quibble with words. Let's get along, Mr. Alberts.

"They presented a tentative draft of an agreement which involved AMMCO, Snap-On, Precision and Larson as parties. Up to the time of submission of this agreement, the question was always put to me as to whether or not we would permit Larson to concede priority of the Zimmerman Counts in Interference. In the agreement I was advised at this conference for the first time that they not only expected a concession of priority but also Larson's first and second applications."

Didn't you say that in this memorandum?

A. Yes, I did and my answer is still the same. I was asked repeatedly what Snap-On would do and I always said they would consent to a concession of priority and there was still no specific demand made to me except that Wacker wants a substantial settlement and wants it
877 promptly. I didn't know what he meant by that.

Q. As a matter of fact, Larson was perfectly willing to concede priority and Snap-On wouldn't release title to that application, isn't that the fact?

A. That is not the fact. There is too much involved to make that a fact in and by itself.

You were asking for a concession on the part of Snap-On of validity and an agreement not to infringe and that is what I was objecting to.

Whatever Larson wanted to do with respect to himself and Precision didn't concern me.

Q. But you were anxious to keep Larson from conceding priority or making any settlement without your consent?

A. He couldn't make any without Snap-On's consent.

Q. You used that fact to negotiate these agreements?

A. I certainly did. I felt he needed some support. He committed a wrong and he was helpless and we were the only ones that could support a proposition that could, in a measure, at least, be reasonable, and it wasn't even that.

Q. You continued to negotiate and refuse to transfer the title of this application in order that Snap-On could drive a better bargain itself, did you not?

878 A. I did not.

Q. Snap-On had nothing to do with your consideration in that regard, is that it?

A. Snap-On had every consideration. What I knew, they knew. What they knew, I knew.

Q. Why were you so anxious to stiffen Larson's position?

A. Because I didn't want it to place us in a position where we had to accept a concession of validity, an agreement not to infringe, and so that we could at least finish our orders that we had then on hand, if you were going to demand more than you could have gotten if you had won the Interference.

Q. Now, in your letter to Snap-On of December 19th, Defendants' Exhibit 69, you say:

"I would like to do this,"

That is, withdraw.

"except for the fact that my withdrawal would give more power to AMMCO and their attorney to kill the desire of Larson to proceed."

Now, the "desire to proceed" with what?

A. Let me read that.

(Exhibit handed to witness.)

That meant to stiffen Larson so he would not—

879 Q. Let me interrupt. I hate to interrupt. I want to know what Larson's desire was to proceed. Proceed with what?

A. Larson's desire in view of the fact he was being threatened here was to give up everything and run away from the whole situation and leave Snap-On holding the bag, so to speak, contract or no contract, with existing orders unfilled.

Q. That is what you didn't want him to do?

A. I certainly didn't want him to do that. That would subject Snap-On to damages and under the contract he had no right to do it.

Q. That is the reason you say in this letter:

"'All my effort all along has been to stiffen Larson's position so that he would not leave Snap-On Tools Corporation holding the bag, contract or no contract."

A. That is correct. I didn't want Larson to be subjected to such pressure that he would throw everything in your lap and leave us without any ability to finish those orders.

Q. You wanted to finish the orders and didn't want to concede priority, notwithstanding there was perjury?

A. I wanted to concede right along.

Q. If you had conceded priority and the patent had issued, wouldn't that have anything to do with it?

880 A. It would be a foolish move on your part to issue that patent on the poor claims involved in the Interference.

Q. Then what were you afraid of if we wouldn't issue the patents? What were you afraid of if Larson proceeded and gave a concession of priority? What were you afraid of?

A. I was afraid of the very demand you were making on us would have to be fulfilled and a concession of validity and an agreement not to infringe would have to be subscribed to without any alternative on the part of Snap-On. I was afraid he would throw the whole thing in your lap because of the pressure you were putting on him and we would have no opportunity to express or exert our rights under that preliminary agreement with him because he would have nothing left, our security would be gone.

We still had legal title of everything in the Larson patent application except the counts in Interference and you could have had those; they were poor claims.

Q. Doesn't it come down to the proposition, Mr. Alberts, that after all Snap-On was your principal client and you were doing everything you could to protect Snap-On?

A. Definitely, and I so advised Larson on every occasion he consulted me.

881 I said, "After all, I am Snap-On's attorney and I have to consider them first," and he knew that and knows that now.

Q. You were also afraid of a possible suit for conspiracy, were you not?

A. I was not afraid of it, no. I was afraid you would be foolish enough to bring one and then we would have to defend.

Q. Now, when did you first suspect or have any reason to doubt that the testimony of Larson was not the whole truth?

A. Well, I would rather state the facts again. What may have been in my mind is hard to determine as to time. The first inkling I got that Larson was not playing ball, so to speak, in every sense of the word in accordance with his affidavit which he signed in my office about having no connection past, prior or future—I mean past, present or future, with any competitor of Snap-On or Automotive

was on his cross examination when Thomasma's name was mentioned and that was a new name to me then.

That was the first suspicion and I advised Snap-On promptly at that time. I think the cross examination of Larson started near noon on the Saturday of November 2d.

Mr. Fidler asked me if I would continue for the rest of that day and I said I would be glad to stay here until
882 6:30 to give him the opportunity to cross examine Larson, so he wouldn't be recessed, and I complied, and that came out that afternoon. I didn't know at that time who Thomasma was.

Q. Now, in your letter of November 11th—you don't mind my coming over here?. (Standing by witness' chair.)

A. No.

Q. (Continuing)—November 11, 1940 from you to Precision, Defendants' Exhibit C2, you say you told the party who called:

"That I have received several inferences to the same effect and that every effort was made to check these charges by arranging for a conference with a party who is supposed to know."

Where did you get those inferences?

A. Krichiver called me on the cross examination, that wasn't an inference, understand, as to the truth of Larson's testimony. He repeated on cross examination that he was the inventor, that all the facts given were true.

From what I could determine at that time, there was only one fact revealed that he was doing business, so to speak, or associating himself with somebody who had been an ex-employee of Automotive.

That was the first inference but there was no sus-
883 picion, or anything brought out in his cross examination that indicated that Thomasma had anything to do with bringing that invention to Larson or anything else or that Larson's dates were wrong.

Shortly thereafter Mr. Krichiver called me and he told me he had a client who was having trouble with Larson and Carlsen; that he had been in communication with Mr. Fidler; he had tried to sell them stock, and he would like to talk to me and he understood I represented Snap-On Tools Corporation. "Would I be interested?"

I said, "I would not be interested in the stock but if you want to bring in your client, I will be glad to talk to both of you."

And I insisted he bring in his cient and we made a tentative date. I believe it was November 9th at 2:30. I called Mr. Larson to be there. I called Mr. Daniel of Snap-On to be there.

Q. I asked what the inferences were, not what you did.

A. He had certain information he wanted to reveal to me and that is all he would say and I said, "Bring in your client," and I called Mr. Larson to be there and I called Mr. Daniel.

Daniel came all the way from Kenosha to be there.

884 About two o'clock he called up. Mr. Larson came in and Mr. Daniel came in. I asked him, while he called me, if he wouldn't care to reset that conference and he said, "No."

Q. Well, did you immediately on November 11th, in view of the fact you had strong inferences that there may have been something wrong, talk personally to Larson or Carlsen or Ford or Whitaker, or any of the other witnesses, including those who perjured themselves?

A. On November 11th, I wrote a letter to Mr. Larson, setting forth I received an anonymous call and I set forth in the letter exactly what was conveyed to me and I asked him whether there was any truth to the anonymous statement.

I sent a copy of the letter to Mr. Daniel. And I believe that is the letter that I have a post script on that I was leaving for the East the next day. The next afternoon or evening I was leaving for Washington.

And Mr. Larson called me in the morning and said he received my letter and that there was absolutely nothing to it; that Krichiver was again making trouble, and I suspected it was Krichiver again.

I asked Mr. Daniel what we ought to do about it and he said, "I don't see we can do much about an anonymous call."

885 I did not reexamine the witnesses who testified under oath. There was no reason I could possibly give for bringing them down, they testified under oath, I believe, until they were proven to perjure themselves.

Q. They told a pretty convincing story?

A. I was very much convinced.

Q. You didn't think it was worth while to talk to any of these witnesses?

A. You mean after that anonymous call?

Q. Yes.

A. No, I had trouble enough in getting them in.

Q. You were thoroughly convinced the story was true?

A. I knew you had to take testimony. I would find out plenty if you got your testimony. There was no rush about it.

Q. Of course, Mr. Fidler hadn't talked to you until November 20th, you realize?

A. No, November 11th he hadn't talked to me then, no.

Q. Now, you have testified about certain threats which you say Mr. Fidler made during the conference which you had with him alone in his office on November 30th—November 20, 1940, isn't that right?

A. That is right.

886 Q. And you prepared this memorandum, Defendants' Exhibit 70, a couple of days later, did you not?

A. I did.

Q. Now, do you find any of those threats recited in that memorandum?

A. In Item 11 I say:

"Fidler insisted that Wacker of AMMCO would force this matter out in the open if they were compelled to prove these facts by taking testimony at Hartford, Connecticut (apparently Zimmerman's present residence) and elsewhere in the U. S. at great expense. In that event, action for perjury would be insisted and the case thrown wide open with the axe piercing wherever it would fall."

I tried to repeat his words as well as I could.

Q. You have repeated them and read this in the court room, have you not?

A. Most likely. I don't claim I can repeat words of somebody else or my own words twice the same.

Q. At that time you tried to make it as full as you could?

A. I made notes of it that evening and I tried to use his words. I, myself, don't use those words.

Q. Now, another memorandum referred to by you,
887 I think, but that was not offered in evidence, that is the memorandum dated December 18, 1940, a copy of which I hand you.

(Handing paper to witness.)

Now, that memorandum covers, does it not, your conference of November 28th?

A. It covers that conference in part.

I might state that this memorandum of December 18, 1940 was requested by Mr. Daniel.

It does not go into the details that my other memorandum did because Mr. Johnson had heard the entire—had a complete recital of what happened at that conference and I took it for granted he was keeping his associates informed.

I then went down to Snap-On and reinformed them, rehashed the whole thing, and there is no requirement to go into detail in this memorandum. He merely wanted me to bring him up to date.

Q. Does that memorandum recite any of the threats which you have testified were made by Mr. Fidler at that conference?

A. It does not for the simple reason Mr. Johnson had those first hand and I was merely trying to bring Mr. Daniel up to date so he could satisfy those asking him questions at the Snap-On offices. That was the only purpose of this report.

888 Mr. Alberts, have you ever testified before?

A. Have I ever testified before? I testified in one case before.

Q. Do you always refuse to answer a question?

A. I don't refuse. There are a lot of questions that I, as a lawyer, know can't be answered yes or no, they are trick questions.

Q. I am going to ask you if you can't answer this question yes or no.

Does that memorandum include or recite any of the threats Mr. Fidler made in the November 28th conference?

A. No, this memorandum does not.

Q. Now, you recall, do you not, that on December 24, 1940, when you and Mr. Hobbs came into our offices, while we were having an office party, Mr. Fidler and I saw you and Mr. Hobbs, and it was asked what should be done about the reporter's notebooks and the testimony which had been taken, that is, the original copy in so far as it had been transcribed, and it was said at that time that the reporter had not transcribed some of his notes, we had trouble getting them, and that we all thought the thing to do was to have those notebooks turned over to you so they could be preserved.

889 Do you recall that?

A. I definitely do not recall that. You came out merely to say hello. You were all having a party there. Mr. Fidler came out and we exchanged the contracts. That

is substantially all that happened. We weren't even in a private office there.

Q. Didn't we go into Mr. Davis' office?

A. No, sir.

Q. You don't recall that?

A. No, sir.

Q. Do you remember Mr. Fidler then wrote the reporter, Mr. Raftery, and wrote you a letter saying he was sending the letter as had been suggested on the 24th?

Do you remember that letter?

A. I remember receiving a copy of that letter.

Q. Do you remember Mr. Fidler's covering letter?

A. Mr. Fidler's letter to Mr. Raftery?

Q. No, his letter to you to which was attached a copy of his letter to Mr. Raftery?

Q. I don't have my file from that date on. I merely brought my file to the date of the settlement.

Q. I show you a photostat of our office copy. I 890 will read the letter:

"December 26, 1940.

"Mr. Harry C. Alberts,
38 South Dearborn Street,
Chicago, Illinois.

Dear Mr. Alberts:

"Re: Larson v. Zimmerman
Interference No. 77,565.

"I enclose a copy of a letter I have just written to Mr. Rafferty, the reporter, as suggested during our conference of December 24th.

"Very truly yours,"

And it was signed by Mr. Fidler. Do you remember that letter?

A. I remember that letter, yes.

Mr. Lindsey: You will admit the authenticity of this?

Mr. Freeman: If it comes out of your carbon file, that is all we need.

Mr. Lindsey: I will offer it in evidence as Plaintiff's Exhibit 22.

And I will offer Mr. Alberts' memorandum of December 18, 1940 with respect to the November 28th contract in 891 evidence as Plaintiff's Exhibit 13.

(Said documents were thereupon received in evidence by the court and marked, respectively, as PLAINTIFF'S EXHIBITS Nos. 22 and 13.)

Mr. Lindsey: Q. Now, did the reporter turn those books over to you?

A. He did not.

Q. He brought them over to your office?

A. That is right.

Q. What did you do with them?

A. I told him I wasn't interested in those books, I had never asked a reporter for books before, ask Mr. Fidler what he wanted to do with them. I wasn't interested in them especially after he told me in two of the books he had shorthand notes in other cases and he wouldn't turn over over to me and he brought them to me with portions scratched out.

If he gave them to me, they would have been delivered with all the other exhibits. I had everything else except those books when Mr. Ooms asked me to produce them.

Q. You heard the reporter testify—

A. I did.

892 Q. —in the pretrial depositions?

A. I did.

Q. You heard him say he had turned over two books to you containing nothing but the notes in this Interference, isn't that correct?

A. Yes, and that was contrary to what he told me.

Q. He testified to that effect?

A. Well, he testified a little vaguely, yes.

Q. And he also testified that you told him to keep the other two books in which there were only partial notes with respect to the interference, there being other notes about other cases, and that you told him to cross out the notes having to do with that Interference?

A. No, he testified he had crossed them out and then brought them to my office.

Q. Now, did you tell him to cross those out?

A. I certainly did not.

Q. Now, you had quite a little bit to say about a bonfire?

A. That is right.

Q. And you discussed this bonfire with Mr. Hobbs?

A. I wouldn't say I discussed it. On the way home from that December 24th meeting, and that is all I
893 would call it, a meeting for exchange of contracts in the outer office—we didn't even see the party. We just heard there was a party in progress, I mean the noise of that party.

We were in the reception room at that time and I was—I brought my contract and Mr. Hobbs brought his—

Q. I am asking about the bonfire. I am not wanting to know about the contracts. We have got those in. Let's get along.

A. Well, when we went back, nothing much was said for awhile. I told Mr. Hobbs that I still didn't feel very good about the whole thing.

Q. Let's talk about the bonfire.

A. I am getting to that.

And that I felt that that was the wrong thing to do and I said, "By the way, I didn't see them hold the bonfire."

He said, "Well, we will hear from them."

And then he said, "Come on over to my office and I will give you a drink, you will feel better."

Q. Well, now, did Mr. Hobbs say he had an understanding with us, Mr. Fidler and me, that there would be a bonfire?

A. He didn't say it in that way. He said there was a suggestion of a bonfire.

Q. Now, who had made that suggestion of a bonfire?

894 A. He said there was a suggestion of a bonfire. I am sure Mr. Hobbs did not suggest it, so it must have been Mr. Fidler. He had stated in the December 13th conference, if everything was settled, the evidence would be done away with.

Q. So, Mr. Hobbs indicated it was Mr. Fidler that was going to destroy the evidence, is that right?

A. No, he didn't mean Mr. Fidler was going to destroy the evidence. He indicated Mr. Fidler had suggested all the parties throw their records into the bonfire.

Q. Oh, he had just suggested it?

A. No. Who are you talking about, "he"?

Q. Mr. Fidler had just suggested there be a bonfire, is that right?

A. He had just suggested there would be a bonfire.

Q. Did you agree to have a bonfire?

A. I wasn't in that at all. I wasn't interested one way or the other. My client had clean hands.

Q. I don't care about your client. I want to find out, did you agree to a bonfire? Did you or didn't you?

A. I didn't agree to it but I didn't object to it.

Q. Did Mr. Hobbs agree to a bonfire?

A. He was the same attitude I was.

895. Q. I don't care about his attitude. Did he agree to a bonfire?

A. I won't put it that way, no.

Q. What did he say? Use his exact language, Mr. Alberts.

A. I think I answered that question.

Q. What did he say? Just repeat as closely as you can his words.

A. He said there had been a suggestion of a bonfire where all the parties would get their records in this case and have a good old bonfire, or something to that effect.

Q. That is, we would all get together and have a bonfire? You, too?

A. That included me, sure.

Q. You saved all of your records, did you?

A. Not for that purpose.

Q. I am not asking for that purpose.

A. I did save all my records.

Q. Won't you please answer the question?

A. Well—

Q. I asked you if you saved all the evidence in the Interference. Now, did you or didn't you?

A. I did.

896. Q. Did Mr. Hobbs save all he had, so far as you knew?

A. I don't know what Mr. Hobbs saved. I don't know he had much of anything.

Q. He had a lot of correspondence about these settlements, did he not?

A. I hadn't seen the file up to that time.

Q. You have seen it now?

A. I have seen it now.

Q. He kept everything, didn't he?

A. He kept letters. I received a photostat of a letter that wasn't in the file originally.

Q. Did we ever ask you for anything to put in a bonfire, including the notary's books of the original testimony or the physical exhibits or the paper exhibits or the Carson drawing, Exhibit 27?

A. Well, I saw a letter in the file from Fidler to Mr. Hobbs saying—I would rather have the letter if it is available, I am not saying I am going to quote it verbatim now—that he is holding the transcript and the Thomasma affidavit subject to your call.

Q. That is what you recall of that letter, is it?

A. In substance, yes.

897 Q. The transcript and the Thomasma—

A. I won't say the transcript. I know the Thomasma affidavit is mentioned.

Q. You are sure of that?

A. I am sure of that. I would like to see the letter.

Q. Well, I will show you the letter. This is Mr. Fidler's letter to Mr. Hobbs of December 31, 1940. Is that the latter you had in mind?

(Handing paper to witness.)

A. Yes.

"As to the testimony and Thomasma statement matter, I am holding everything subject to your call."

Q. That, to you, meant he was going to destroy it, is that right?

A. No, it didn't mean that. He had nothing to do with the Thomasma statement. I don't see any reason why he should call for it.

Q. Because you couldn't see any reason why Mr. Hobbs should call for it, you just assumed that was a letter agreeing to destroy it, is that what you assumed?

A. Yes. I would rather have Mr. Fidler's construction of that letter.

898 Q. Wait a minute, Mr. Alberts. You referred to this letter, you know. I didn't bring it up. Now, I am asking you what you gathered from that statement you read as to a bonfire?

A. I gathered from this statement that that was the closest call of compliance with that suggested bonfire that yet was made in the case.

899 Q. When did you first see this letter to Mr. Hobbs?

A. When his file was made available to me.

Q. And when was that?

A. Just before I pleaded the defense of compounding a felony.

Mr. Lindsey: I offer the letter in evidence as Plaintiff's Exhibit No. 23.

(Said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT No. 23.)

Mr. Lindsey: Q. Did Mr. Hobbs say, with respect to this bonfire, that there was a tentative understanding?

A. No, I wouldn't even go that far.

Q. He didn't say anything about "understanding"?

A. If you know Mr. Hobbs, he doesn't express himself that way.

Q. And he didn't say then that there was a tentative understanding?

A. I wouldn't put it that way, no. It wasn't in express words, no.

Q. Did he say, "If the matter was settled, everything would be done away with"?. Did Mr. Hobbs say that?

A. Mr. Fidler said that.

900 Q. Well now, yesterday you testified that you were skeptical about something that you didn't know about, and you asked Mr. Hobbs, and, I quote:

"What did Mr. Fidler mean by 'done away with'?"

And then you said, and I am going to show you the testimony:

"And he, referring to Mr. Hobbs, of course, said, 'If the matter was settled everything would be done away with'."

Now, did Mr. Hobbs say that?

A. I didn't say "skeptical". I said, "Well, a statement was—"

Q. Well now, I was merely trying to save time.

A. I would rather read the whole statement.

Q. O.K.

A. "A statement was made at that conference that I didn't quite understand, and it appeared to me that I wasn't in on everything, and after they left I said to Mr. Hobbs, 'What did Mr. Fidler mean by "done away with",' and he said, 'If the matter was settled everything would be done away with.'" —

Q. Mr. Hobbs said that?

901 A. Yes. He said that is what Mr. Fidler meant.

Q. And then read on, will you, about the tentative agreement?

A. "'I said apparently he had some conversations I wasn't in, and he admitted he had lunch with him several times or at least one time, that I wasn't present, and I knew nothing about it, that they had some conference I knew nothing about, that he didn't report to me. I thought it was all right. I thought he should explain it to me. He said, frankly, there was a tentative understanding submitted by Mr. Hobbs that if a settlement goes through, or if the settlement goes through all the parties would have a bonfire of all the existing records and that would be the

end of it," and I will say now that my choice of the word "understanding" was a very poor one. That word was not used by Mr. Hobbs. The conduct of the parties was tantamount to an understanding. That is the way I meant that word.

Q. When you testified yesterday, that is, gave this testimony that you have just read, Mr. Hobbs was not in the Court room, was he?

902 A. I don't know. I was too occupied with my testimony.

Q. Will you look around and tell us whether Mr. Hobbs is now in the Court room?

A. He is.

Q. You recall in the Third Amended Petition of Snap-On which you verified, you said that Snap-On had been coerced by Automotive and its agents.

A. That is right.

Q. And you heard Mr. Johnson testify that there was no coercion, did you not?

A. I believe he testified, the way I construed his statement, that beyond the threats he testified to, that he personally was not subject to any coercion from there on.

Q. You don't remember he testified that Snap-On was not coerced either?

A. Well, subject to my qualification, that goes for that answer, too. He had testified as to threats he had known of, and he was testifying only as to his direct knowledge and not what somebody told him.

Q. And then you say that by reason of the duress, coercion and threats against Snap-On, Automotive compelled the cancellation of the agreement, Exhibit No. 5,

903 and between Snap-On and Larson?

A. Yes.

Q. Will you please tell the Court just what the duress was that Automotive and its agents exerted of such a nature as to compel Snap-On to agree to the cancellation of that agreement?

A. Well, my entire testimony was directed to that most of the day, but I am willing to go through it again.

Q. I don't want you to go through all your testimony today. I just want you to confine your answer to the question, Mr. Alberts.

A. Will you just read the quoted part, just the allegation? That is all I want.

Q. It is a pretty long allegation.

A. No, I mean the one you had just read from.

Mr. Lindsey: Let us read the question. Maybe that will shorten it.

(The last question was read by the Reporter as follows:

"Question: Will you please tell the Court just what the duress was that Automotive and its agents exerted of such a nature as to compel Snap-On to agree to the can-
904 cellation of that agreement?")

The Witness: I am now going to testify as to direct things and not the conduct and general tenor of the negotiations. I am going to briefly enumerate what I had in mind when I made that allegation.

The first conference of November 20th, 1940 with Mr. Fidler, where he set forth what he had in that Thomasma affidavit in the way of a summary, that he showed me a drawing by Thomasma of an abrasive chuck, and then had me look at Exhibit 27 in Interference, to make a comparison; that I made that comparison and came to the conclusion and so expressed myself to Mr Fidler, that they certainly did look like the drawings were made by the same party; and the details which were given by Mr. Fidler that I knew from my observation and hearing of the cross examination of Larson in the Interference Deposition, that Thomasma must have known the facts and was closer to it than anybody else, and that Larson—

Q. I wonder if we can shorten this. I am asking you what the duress was.

A. And at the end of all of that he said, "Well, Mr. Wacker wants—will make me force the matter out in the open and prosecute Larson; and the axe will pierce
905 wherever it falls." That is the first thing.

Q. And you gathered from that he meant Snap-On, is that correct?

A. No, I didn't gather from that. I was still then the attorney for Larson. He was directing it to—

Q. No, I am talking about Snap-On. The threats you say were made against Snap-On to compel Snap-On to cancel its agreement with Precision.

A. All right.

Q. I want you to tell the Court—

A. All right.

Q. —just what the duress was and just what Snap-On had done in participating in this conspiracy of perjury to

put them in the position where they would have to yield. Just what were they guilty of, just tell the whole story.

A. My testimony always was, and still is, they were guilty of nothing.

Q. Then they weren't under any duress?

A. They certainly were under duress, and if you want it limited to Snap-On, I will be glad to give it to you.

Q. That is what I would like to have, if you can do it.

A. All right. The conference of November 28th, 906 1940, where Mr. Fidler emphatically stated he was going to proceed on the basis that Snap-On was Precision and Precision was Snap-On, that Snap-On's hands were not entirely clean in this matter, that Mr. Wacker was going to unleash the dogs if this matter wasn't settled promptly to his satisfaction. Then—

The Court: Haven't we been over this a couple of times?

Mr. Lindsey: Yes.

The Court: What is the reason for going over it again?

Mr. Lindsey: I am trying to find out, may your Honor please, how Snap-On, according to his pleadings, could possibly be under any duress or coercion, unless they had a part in this conspiracy to defeat Zimmerman's rights.

The Court: I have heard this man give that testimony either two or three times before, today. Let us take a recess for ten minutes.

(A recess was taken.)

Mr. Lindsey: Q. Mr. Alberts, after Mr. Larson confessed perjury to you on November 28th, 1940, did you call Mr. Hobbs for Mr. Larson when Mr. Carlsen called on Mr. Hobbs for the first time about that settlement matter?

907 A. No. The way I remember, the first telephone contact was made by him calling me. I didn't know where they were going.

Q. That was after Mr. Larson and Mr. Carlsen had called on Mr. Hobbs that there was any communication direct between you and Mr. Hobbs, is that correct?

A. That is the way I remember it.

Q. And what did Mr. Hobbs say when he called you the first time? Make it very brief now

A. He told me that Larson—Carlsen was in, that he had talked to them a very short time, and that they had told him that they had perjured themselves and they were on the spot. They had told him I was the attorney in the Interference and I interrupted him by saying, "Well, Mr.

Hobbs, I want you to know right now that I had no knowledge of that perjury up to November 28th," and he said that they so stated to him, and that wasn't the reason he was calling me, and he wanted to know what my view was in the matter, what Snap-On's position would be, and wanted my suggestions, whatever I had to say on the matter, and I briefly stated by view, and he said he doesn't see anything else other than try to make a settlement in the case, and I told him that whatever was reasonable, whatever Larson would have to do that was within reason, Snap-On would go along and I would make such recommendation to Snap-On, and I am sure whatever recommendation I made they would go through with.

That was the tenor of the conversation.

Q. Now, you filed Snap-On's first Petition for declaratory Judgment against Automotive on July 6th, 1942, and you amended that Petition on July 21, 1942, and neither in the petition nor in the amendment did you refer to any perjury or compounding of perjury. On July 31, 1942 you filed the Second Amended Petition in which you claimed or charged that Automotive had compounded a felony by charging that Larson and his witnesses had testified falsely.

Now, prior to July 31, 1942 when you filed this Second Amended Petition, did you consult with Mr. Hobbs or any one in his office as to what his recollection was as to the facts with respect to threats and duress and coercion and bonuses and the other things about which you have testified yesterday and today?

A. I did not directly consult Mr. Hobbs, but—

Q. Now, that Second Amended Petition was filed July 31, 1942, and you waited about nine months and filed your Third Amended Petition on March 1, 1943, at which time you, for the first time in your pleadings, positively alleged that Larson and several of his witnesses had committed perjury.

A. I alleged that in the Second Amended Petition, but not so specifically, that is all. You filed a motion to strike, and before it was decided I amended the pleadings because there were other matters that came up that needed amending.

Q. I was trying to fix the dates. The pleadings will speak for themselves.

Between July 31, 1942 and March 1, 1943, did you talk

to Mr. Hobbs or Edward Haight or anybody in his office as to the facts or their recollection of the facts as to the compounding of the felony and their knowledge of the perjury and bonfires and all and sundry things you testified about?

A. I consulted with Mr. Hobbs who had some contact with them, yes.

Q. When was that you consulted with Mr. Hobbs?

A. Sometime before the Second Amended Petition was filed.

Q. You said you hadn't just a minute ago. Let us get it straight.

I mean with Mr. Ooms, pardon me.

Q. I am talking about Mr. Hobbs. Can't you possibly answer a question directly, Mr. Alberts? Let us get along.

A. I misunderstood the question.

Q. At the time that these settlement agreements were entered into, the latter part of 1940, December, 1940, you knew, did you not, that Precision had designed another wrench to place on the market?

A. Prior to which date?

Q. By the time that these agreements were entered into; we will say December 20, 1940?

A. December 20?

Q. 1940.

A. No. December 26th was the first time that he came to my office and told me he had the new wrench.

Q. Oh, December 26th he came into your office?

A. Yes.

Q. Who was that?

A. Mr. Larson.

Q. Where was that office, where was the office at that time, your office?

911 A. 38 South Dearborn. It has been there for a good many years.

Q. And you prepared the application that day while he was sitting there?

A. I roughed out an application for him.

Q. Did you prepare and finish the application the day he called?

A. It wasn't in what I considered final form. It was very close to finished form.

Q. And the drawings were prepared?

A. No, they weren't. I worked off of an old photostat.

Q. And the claims were prepared that day?
A. Some claims, yes.
Q. They weren't finished, were they?
A. All the claims?
Q. All the claims weren't drawn that day?
A. All the claims were roughed out.
Q. Just roughed out?
A. Well, they were complete.
Q. Was the specification complete?
A. Yes.
Q. What time did he come in on December 26th, 1940?

912 A. He came in in the morning and told me he would like for me to get a written description of this new wrench of his, and I said that from what I had in my files I could just as easily describe it in a form of a patent application, and I asked him what he wanted it for. He said, well, he was going to Snap-On Tools Corporation that afternoon and he wanted to show it to them there, he wanted to get busy on it, he wanted to know if they were interested, and if not he had somebody else that he knew would be interested.

So he said he had some other work to do in the Loop or somewhere in the city, anyway, he would be back, and he asked me when I could get that for him, and I said that it would be a matter of four or five hours—perhaps more—that he should come in whenever he was ready to go, whenever his work was done and he was ready to go to Kenosha, and he came in, oh, I would say three o'clock and I gave him what I then prepared and he took it along.

Q. Now, tell us how far along that application was completed by three o'clock.

A. It was completed and ready for submission to a draftsman, but he did not want me to submit the photo-
913 stat that I had resketched the new structure on, because he was going to make a change in the shape of the case, and until that change was made he didn't exactly know the proportions, that he would then bring down a model and have my draftsman draw it up.

Q. Well, then the drawings were made later, is that correct, the Patent Office drawings?

A. The Patent Office drawings were made later.

Q. And I suppose the specification and the claims were rewritten later, were they not?

A. No, they had the same numbers on. I worked off of the photostat of his previous wrench and merely sketched in the changes.

Q. How complete was the specification and claims at three o'clock?

A. It was complete, I would say complete.

Q. Absolutely complete, ready to file in the Patent Office?

A. I would say I had intended to go over it again for corrections of prepositions or a word here or there that I may have thought was better suited at a later date. I thought it was a pretty good shape, ready for filing, except for the drawing.

914 Q. It was all in shape except for the—

A. Fairly.

Q. —drawings?

A. Yes.

Q. I want to find out how complete, not fairly. This is critical.

I am not trying to be facetious, may your Honor please.

The Witness: I would say it was sent in substantially in the form it was in then.

Q. Substantially, but there were some changes?

A. Oh, I won't say I didn't change a preposition here or there, or a word. The substance was there and I think everything was there except stenographic corrections. We were doing it in a big hurry and I am not so sure that—I wasn't sure then—I didn't have the opportunity re-reading it for my final o.k., I will say that much.

Q. So Mr. Larson came in in the morning and explained this wrench to you and made these sketches, or whatever they were, and you dictated the specification and you dictated the claims and Mr. Larson left by three o'clock that day for Kenosha?

A. I didn't dictate the specification or the claims.

915 I rewrote a copy of an application of one of his former applications and made the necessary changes.

Q. Have you got that file with those original specifications and claims as you drafted them?

A. Here?

Q. Yes.

A. No, I do not.

Q. Will you produce them tomorrow?

A. I will.

Q. You will recall, will you not, that that application was executed in Kenosha on December 28th, 1940?

A. Well, I have a recollection, yes.

Q. In other words, this was submitted to you and you prepared all this, and Mr. Larson read it over and you went up to Kenosha and you executed it all in one day?

A. I didn't know he was going to execute it there, but he did.

Q. Isn't it a fact, Mr. Alberts, that it takes more than that time to prepare an application ready to be filed in the Patent Office?

A. No, it isn't a fact. I have done that repeatedly.

Q. I hand you this, and ask you if this is not the drawings for Larson Patent No. 231214 which issued on
916 the application that you have just been referring to?

A. They are.

Mr. Lindsey: I will offer the drawings of the patent in evidence as Plaintiff's Exhibit 24, and a certified copy of the oath for the application maturing into this patent as Plaintiff's Exhibit 25.

(Said documents were thereupon received in evidence by the Court and marked respectively as PLAINTIFF'S EXHIBITS 24 and 25.)

Mr. Lindsey: That is all, your Honor.

The Court: Any redirect?

Mr. Freeman: No redirect.

The Court: All right.

(Witness excused.)

917 Mr. Ooms: I think the reporter will not need to take this. I am going to read very rapidly.

This is the deposition of Frederick Glade Wacker.

(Thereupon Mr. Ooms read from the deposition of Frederick Glade Wacker.)

918 Deposition of Frederick Glade Wacker taken in the above-entitled cause by the Defendants Snap-On Tools Corporation, Precision Instrument Manufacturing Company and Kenneth R. Larson, before Thomas B. Goodwill, a Notary Public of Cook County, Illinois, on Friday, April 23, 1943, at Suite 1901, 332 South Michigan Avenue, Chicago, Illinois, pursuant to Notice of Taking Depositions and proof of service shown thereon.

919 State of Illinois } ss:
County of Cook }

FREDERICK GLADE WACKER, called as a witness by the Defendants Snap-On Tools Corporation, Precision Instrument Manufacturing Company and Kenneth R. Larson, being first duly sworn by the Notary Public before the commencement of his testimony, was examined and testified as follows, to-wit:

Examination by Mr. Freeman.

Mr. Freeman: Mr. Reporter, will you make it appear that Mr. Freeman is examining on behalf of Snap-On.

Q. State you full name, Mr. Wacker?
A. Frederick Glade Wacker.
Q. And your address?
A. Residence?
Q. Residence, please?
A. 490 East College Road, Lake Forest, Illinois.
Q. And your occupation?
A. Manufacturing.
Q. With what company?
A. Automotive Maintenance Machinery.
Q. And what is your official connection with that company? What title do you hold?
A. President.
Q. And how long have you been president of it?
A. Since we started, I believe it was in 1923.
Q. What is the general nature of the Company that you started in 1922, of which you are president?
920 A. We started making automotive service equipment, tools, but as we have gone through the years we have taken on other lines, in addition to that. It is mostly —I would say that we manufacture machine tools and precision tools, largely.
Q. And your Company is the owner of the two Zimmerman patents involved in this suit?
A. That is right.
Q. And Zimmerman is an employee of your company?
A. That is right.
Q. When did he enter your employ, if you recall? About when?

A. About in the middle of the 1920s, somewhere in there; I would think 1925 or 1926; don't you think that is about right? I don't know exactly.

Q. And is he in your employ at the present time?

A. No; he is not.

Q. When did he leave your employ?

A. As I remember it, I would think he left our employ about somewhere around 1937, but that is a guess, because I don't know, I don't remember. I could check it up for you and let you know definitely.

Q. Do you recall an Interference involving Zimmerman Applications which have now matured into the 921 patents in suit, with Kenneth R. Larson?

A. Yes.

Q. When was your attention first directed to the Interference generally?

A. I think an interference was declared by the Patent Office, of which Mr. Fidler notified me sometime in 1937 or 1938, I would guess 1938.

Q. Have you kept in rather close touch with the Interference subject matter, from the time you were notified by Mr. Fidler, up to the termination of the Interference?

A. I heard I believe regularly from Mr. Fidler as to the progress of it. Of course, I am not a patent attorney; and I kept in touch with it in a general way, without being familiar with the legal detail at all times.

Q. And were the reports from Mr. Fidler to you or to your company in writing?

A. Some of them were and some of them were over the telephone. Some of them possibly, probably in conference, I would say.

Q. Now you have mentioned Mr. Fidler in connection with this Interference. Did you during the pendency of the Interference have any contact with any of the other members of the firm of Davis, Lindsey, Smith & Shonts?

The Witness: During the pendency of the Interference, is that the question?

922 Mr. Freeman: Q. (Continuing) From the time the Interference started until it ended?

A. Yes, also with Mr. Lindsey.

Q. And did you by any chance have any contact or connection with Mr. Hibben?

A. I met Mr. Hibben on several occasions and I knew

that he was working with Mr. Fidler on the case, but I don't think I had any discussions with Mr. Hibben.

Q. These discussions that you had with Mr. Fidler, and then you mentioned Mr. Lindsey, were they joint discussions, that is, were they, when both Messrs. Lindsey and Fidler were present?

A. I think some were and possibly some weren't.

Q. And did you have any correspondence with Mr. Lindsey with respect to the Interference?

A. I don't remember any on my part. He might have written me.

Q. You, of course, know George B. Thomasma?

A. Yes.

Q. And he was a former employee of your company?

A. That is right.

Q. And he entered your employ along about 1927?

A. I would think that was about right.

Q. And he continued in your employment until about June, 1938,

923 A. I think that is right.

Q. 1939? Pardon me.

A. Well, along in there, yes.

Q. When did you first learn of Mr. Thomasma's connection with Precision Instrument Manufacturing Company, one of the defendants in this case?

The Witness: Do you mean when did I first suspect or when did I first learn?

Mr. Freeman: Well, you can answer it just as you please. I don't care whether you suspected or learned. You might give us both, then.

A. Well, I can say that some of our salesmen who had been covering the territory along in, I would think 1938, had brought in rumors to the effect that a tension wrench was being manufactured in Des Plaines and that they heard that Mr. Thomasma was connected with it.

Q. That is the suspicion you are talking about?

A. That is the suspicion.

Q. Now, tell us when you learned definitely that Mr. Thomasma was connected with Precision?

A. Well, we learned—I discussed the matter with Mr. Fidler, and we checked up I believe on the incorporation papers of the Precision Instrument Manufacturing Company, and we found that a Mr. George B. Thomasa, not

Thomasma, but Thomasa was one of the incoroporators 924 and I believe the vice president of that company. We then suspected quite strongly that Thomasa and Thomasma were the same, and we thought at that time that—we felt pretty sure that Thomasma was the same one. Thomasa, Thomasa, was the way he appeared in the incorporation papers.

Q. Now, do you have any record that will tell us when you obtained the certificate of incorporation of Precision that gave you this information that you have just testified about?

A. No, I don't think I have.

Mr. Freeman: Might I ask counsel, then, for the Plaintiff, if they have any record showing when the certificate of incorporation was obtained that disclosed the information that there was a party by the name of George B. Thomasa as one of the incorporators?

Mr. Fidler: I think that that information appears in the files, in among some of the papers which are in my files. I don't know just where to put my finger on it at this time, but probably in the papers which we have collected for you.

(Discussion off the record.)

Mr. Fidler: I think it was the latter part of 1938 or the first part of 1939.

Mr. Freeman: All right.

Mr. Fidler: We didn't secure copies of the articles 925 of incorporation, though, until I think it was 1940.

Mr. Lindsey: I would like to make a short statement on the record, if I may, Mr. Freeman. I do not want it to appear at any suggestion that I am not willing to produce any papers or anything of that sort, but I want to say that I did not come into this Interference until after all the testimony was taken. I knew there was an interference. I am willing to take the stand on this, as it was not until, as I recall, around the 9th or 10th of December, 1940, that I was consulted about this at all. I knew there was an interference. And I know nothing about this correspondence. I have glanced at some of it. So that you will have to rely largely on Mr. Fidler. I am making that statement because I don't want you gentlemen to think that I am holding back anything, because I am really not familiar with it.

Mr. Freeman: That is perfectly understandable, Mr. Lindsey.

Q. Then, you had some suspicion about Mr. Thomasma as early as 1938?

A. I would think so, yes. Wasn't that the date that he was discharged, in 1938?

Mr. Lindsey: 1939.

The Witness: Or was it in 1939?

Mr. Freeman: He was discharged in June of 1939.

926 The Witness: Well, it might have been 1939 before we had real suspicion, then.

Mr. Freeman: Q. Well, if you obtained the articles of incorporation or the certificate from the Secretary of State, you were supicious at that time, were you not?

A. That is right, certainly.

Q. What was Mr. Thomasma's position or job with your company?

A. He was sort of an all round machinist and tool maker, but frequently worked with Mr. Zimmerman on some of his experimental work.

(Mr. Harry C. Alberts and Mr. Robert L. Grover arrived in the hearing room at this time.)

Q. Why did Mr. Thomasma leave your employ in June of 1939?

A. Well, because of my suspicions, I called him into the office and told him what I had heard. He denied it rather feebly and I told him I had also heard that he had removed certain wrenches and tools from our factory, which he admitted, and on the strength of that I told him that his services were at an end so far as we were concerned.

Q. I notice that you used the words "Removed certain wrenches". Do you mean he picked up some property not belonging to him and belonging to your company?

A. Well, he took them out of the factory. Company property, now, that is true. He more or less contended

927 that some of the things that he took out to demonstrate at various times on his own time.

Q. Did he return that property?

A. That I don't know. In other words, I think he took it out without going through the regular requisition route—

Q. Trade channels?

A. —of getting it out of the stock room.

Q. And did you have to take any steps to have that property returned or to have him pay for what he had taken?

A. No, because it did not amount to a great deal.

Q. Did you check the amount of property that he took out?

A. No. He admitted that he had taken out several items, and the difficulty, of proving anything there, was that certain things he had taken out with our permission, and to find out just what he had taken out with our permission and what he hadn't—

Q. When things are taken out of your plant with your permission, that is either in the form of a requisition or with somebody's approval?

A. It should be.

Q. And was there any check-up made after he had admitted taking some of your property out of the plant?

A. No.

Q. Did you have anyone else make a check-up?

928 A. No, I don't think so.

Q. You just merely let it go, then, when you found that he had removed some of the property?

A. I was primarily interested in getting him out of the factory, period, and I wasn't concerned beyond that.

Q. Did you locate any of the property that Mr. Thomasma had removed?

A. No. I think it was only several wrenches, and as far as I know it was never checked up or followed up. The whole thing wouldn't have amounted to probably a hundred dollars, and to follow it through would have cost much more.

Q. When you say it probably didn't amount to over a hundred dollars, how do you know?

A. Well, I don't. I don't know definitely.

Q. You didn't trust the man when you fired him, did you?

A. No, I did not.

Q. And he had admitted taking some property belonging to your company?

A. That is right.

Q. And he had admitted taking that property without the consent of the Company or those authorized to give consent?

A. That is right.

Q. And yet you made no check-up whatsoever?

A. No. Not that I remember.

Q. Do you know whether anyone else in your com-
929 pany made a check-up?

A. No, because I don't think, with our records as they were—I don't think it is possible that it could have been any great amount.

Q. Did you ask Mr. Thomasma to return the property that he had removed?

A. No, because then it would have been second-hand, and in any event, it wouldn't have been saleable.

Q. How did you learn definitely, then, that Mr. Thomasma was connected with Precision?

The Witness: You mean beyond the papers of incorporation?

Mr. Freeman: Well, that was your suspicion that led you to your getting the certificate of incorporation?

A. Yes.

Q. And I now would like to know what you learned, when you definitely knew?

A. We definitely knew, I would say in the summer of 1940, when Mr. Thomasma himself approached us and, among other things, admitted the fact.

Q. Well, he had admitted the removal of your property prior to the time you fired him?

A. We fired him at the time he admitted it.

Q. And did he admit, then, that he was connected with Precision Instrument Company?

930 A. No. He did not.

Q. Did you confront him with the fact that you had a certificate of incorporation showing his name somewhat mutilated?

A. I don't think at that time we had that certificate. I think we secured that certificate or a copy of it after we fired him.

Q. Are you willing here to say that you fired Mr. Thomasma solely upon suspicion that he was connected with Precision Instrument Company?

A. Both on suspicion and his rather weak denials, plus the fact that he had admitted removing certain tools from the factory.

Q. You referred to a feeble or a weak denial of his having removed certain property from your plant?

A. No. I say a weak denial of his connection with Precision.

Q. Then you actually did accuse him of having con-

nection with Precision Instrument Company prior to the time he was fired?

A. That is right—I mean at the time he was fired.

Q. And when I used the word fired, that is exactly what took place?

A. Discharged.

931 Q. At your direction?

A. That is correct.

Q. Did Mr. Fidler have any connection with the discharge of Mr. Thomasma?

A. None at all.

Q. Did you arrange for any interviews as between Mr. Thomasma and Mr. Fidler, prior to the time you fired Thomasma?

A. No.

Q. Did you inform Mr. Fidler, prior to the time Thomasma was fired, that Thomasma had been accused of removing property belonging to your company without your consent?

A. I doubt that. I wouldn't be sure. I don't know.

Q. If you did advise Mr. Fidler, that would be among the correspondence?

A. Or I don't remember that I did, and it might or might not have been among the correspondence, because we would frequently telephone each other rather than write letters.

Q. When did you first advise Mr. Fidler that Thomasma had removed property belonging to your company?

A. I do not remember that I did advise Mr. Fidler at that time.

Q. Mr. Fidler knew that at the time that he obtained 932 the affidavit of November 15, 1940 executed by George B. Thomasma, did he not?

A. Why, he may have, but then we rehearsed the whole thing—I mean discussed the whole thing in the light of the Interference and the situation involved in it.

Q. So that prior to Thomasma's execution of the affidavit, Mr. Fidler, your counsel, then knew that Thomasma had removed certain property not belonging to him, from your company?

A. He may have. I don't know. I presume he did.

Q. Now, you had suspicion that Thomasma was connected with Precision. What did you do to confirm that suspicion? When I say "What did you do", I mean not

necessarily you, yourself, but did you direct anyone else to check up Thomasma's connection or to follow up your suspicion of his connection with Precision?

A. Not at that time.

Q. Well, when did you then first follow up your suspicion, in order to get confirmation of it?

A. Mr. Thomasma himself admitted at a meeting that he sought one night, at Mr. Fidler's house, Mr. Thomasma admitted his relationship in that conference.

Q. That is, Mr. Thomasma met Mr. Fidler at Mr. Fidler's home?

A. That is right.

933 Q. Who arranged for that meeting?

A. Mr. Travis called me.

Q. And who is Mr. Travis?

A. Mr. Travis was a former superintendent of ours under whom Thomasma had worked, and Mr. Thomasma approached Mr. Travis and asked Mr. Travis to arrange for a conference between himself, Thomasma, and myself, and I insisted that Mr. Fidler be in on any such conference.

Q. When was that conference?

A. That conference was in the summer of nineteen—now wait a minute—it was either late summer, or autumn. I think it was in the early part of November, or the latter part of October, of 1940.

Q. What did Mr. Thomasma tell you at that conference?

A. Mr. Thomasma I think was worried because he felt that an injustice was being done to us as a result of his activities, and I think he wanted to clear his own skirts, and at the same time, while he didn't want to hurt us, his position was that he did not want to get hurt himself, and he arrived at that conference, to complete the story, with an attorney by the name of Mr. Krichiver.

Q. Now, Thomasma's desire to clean his skirts, did he tell you that?

A. Well, I think he was worried. He put it on a basis that he felt that an injustice was being done to us and
934 he would like to rectify, but at the same time he didn't want to hurt himself as a stockholder of the Precision Instrument Manufacturing Company.

Q. In other words, he wanted to clear himself and still have the benefit of that stock interest that he had in Precision?

A. Or else have his stock purchased.

Q. Did he offer to sell you the stock?

A. He wanted to know if we would be interested in buying it, he and Krichiver both.

Q. Did he make any proposal or tell you how much money he might want to dispose of it?

A. No, because we told him that we weren't interested in buying any stock under conditions of that kind.

Q. In Thomasma's desire to clear himself or clean his skirts, did he offer to reimburse you for the property he had taken?—

A. No.

Q. —unlawfully, or without your consent?

A. No, because our salesmen from time to time carry samples and they are lost, and we didn't take the loss of a few odd tools very seriously. The amount didn't amount to much.

Q. When you say "a few odd tools", how do you know it was a few odd tools?

935 A. We presumed that from his statement, plus the fact that it is pretty difficulty to get away with any sizeable quantity without records showing it.

Q. The tools that Thomasma did take had value, though?

A. Oh yes.

Q. Thomasma left your employ in June, 1939, and you have testified that you met with him in late October or early November of 1940?

A. That is right.

Q. Now tell me whether or not you saw Thomasma between June of 1939 and October or November of 1940?

A. No. I did not.

Q. You had no connection whatsoever with him—

A. Not at all.

Q. Did you during that time have any investigation made of Thomasma's activities, either for the period from June, 1939 up to October of 1940, or prior to June of 1939?

A. The first investigation that was discussed came up at a time when Mr. Fidler took it up with me and suggested that he would like to have some investigations made, and that was at a time following the alleged early dates in the Interference, and then there was an indication, I believe, that Precision and Snap-On, either or both, I don't know the legal angle, were going to take testimony
936 on the basis of those alleged early dates; and then Mr. Fidler came to me, or called me, I don't remember

which, and he said that if those dates were established, that as far as maintaining our position in that Interference, we were through; that he couldn't believe the dates in the light of our knowledge of the art, he was very suspicious of them and he would like to have permission to employ an investigator to see what he could find out, to see what the picture really was.

Q. And an investigator was employed?

A. I believe so, yes.

Q. Now, do you know when that investigator was employed?

A. I would guess that that investigator was employed somewhere around three or four months before the Interference was finally settled.

Q. Now, do you know whether Larson's testimony was taken before or after your conference with Mr. Thomasma at Mr. Fidler's home?

The Witness: Whether Larson's testimony was taken before or after?

Mr. Freeman: Yes.

The Witness: Will you ask that question again?

Mr. Freeman: Read the question.

(Pending question read by the Notary.)

A. I think that it was after, that Mr. Larson's 937 testimony was taken after our conference with Mr. Thomasma at Mr. Fidler's home.

Q. By the way, when Thomasma was discharged, were you the one that actually discharged him?

A. Yes, sir.

Q. Who else was present besides yourself and Thomasma?

A. I believe Mr. Allen was present. Is that correct? (Witness addresses Mr. Allen.)

I think Mr. Zimmerman was present.

Q. Can you tell me why the conference with Mr. Thomasma was arranged at Mr. Fidler's home instead of at your place of business or at Mr. Fidler's office?

A. Well, in the first place, Mr. Thomasma and Mr. Travis both had daytime jobs, and we tried to find a sort of an intermediate geographical point, because I lived way out on the North Shore and Mr. Thomasma I believe lived in Park Ridge, and I have forgotten where Travis lived, it was on the North Side somewhere, so it was just arranged I imagine for reasons of convenience.

Q. This investigation that you talked about a minute or two ago, did that include the investigation of George B. Thomasma and his activities?

A. I imagine it did. I am not familiar with the details of that investigation.

938 Q. And you likewise had that investigation include Larson?

A. I would be speaking for Mr. Fidler on that. I presume that it did, but I couldn't say definitely.

Q. Do you know what firm of detectives or investigators were used for making that investigation?

A. I accidentally one day met the head man of that outfit. I don't know if it was a firm or not. His name was Wise and Mr. Fidler introduced me to him out in the hall here. I was coming in and he was going out.

Q. Did you ever see a report made by the investigators of their investigation?

A. Never.

Q. Were you ever given a resume or the substance of the report, in any correspondence that you had with Mr. Fidler?

A. Not that I remember.

Q. Were you ever given an oral report of what the investigators found, by Mr. Fidler?

A. Some things, yes.

Q. Just what were those things, as best you recall?

A. Well, one was to the effect that Mr. Carlsen's name was not Mr. Carlsen. I remember that. I remember, also, that they investigated some of the purchasers of these early Precision wrenches and found some variations in that testimony. I believe one of the so-called purchasers 939 of those wrenches was located on a vacant lot.

Q. Was that a report given you after the taking of Larson's testimony?

A. Yes. It would have to be—or either his or some of his witnesses.

Q. In other words, you had the testimony checked by investigators, after Larson had taken his testimony?

A. I presume Mr. Fidler did, but I mean we couldn't have checked a matter involving Mr. Larson's testimony before he would give it.

Q. There was an investigation, of Mr. Larson's activities, made prior to the taking of Larson's testimony?

A. That I don't know.

Q. Was there any investigation made of Thomasma prior to the date that Larson took his testimony?

A. There might have been, but I wasn't kept in touch in detail with what these investigators were doing.

Q. Any disbursements on the part of Mr. Fidler's firm would, of course, be included in your regular monthly statements rendered by the firm?

A. I think so.

Q. And do you recall whether or not you were invoiced more than once for detectives' investigations?

A. I would think we were. That is my recollection.

940 Q. That investigation ran over a considerable period of time, did it not?

A. Well, I believe I said I thought it was between three and four months.

Q. So that if the testimony were taken in October of 1940 and the investigation ran over a period of three or four months, there must have been some investigation, then, prior to the taking of the testimony?

A. I think the investigation was first suggested when these very early dates, of which we were suspicious, were first alleged. That is when I think it was undertaken.

Q. That is, shortly after the Preliminary Statement in the Interference was made available to your counsel?

A. I think that that would be it.

Q. And of course, you received a copy of the Larson Preliminary Statement, from your attorneys?

A. I presume so. I don't know.

Q. Or at least you received a report setting forth the various dates?—

A. That is right.

Q. —of conception and reduction to practice, from your attorneys?

A. That is right, yes. I was made familiar with it, yes.

Mr. Freeman: I might save a little time if I can get an answer now, from counsel for Plaintiff, as to whether

941 or not they have, in the papers that we have requested, reports rendered by the investigators from time to time?

Mr. Fidler: There were no written reports rendered. There were oral reports.

Mr. Freeman: I can still save some time, if you will advise me, Mr. Fidler, whether or not you have, among the papers we have requested, any memorandums that you pre-

pared as a result of the oral reports given to you by the investigators?

Mr. Fidler: I don't think that there are any such papers among the papers that I have collected. I do not understand that you requested any such papers.

Mr. Freeman: My letter didn't ask for it. I am going to ask for it now, and ask that any reports that you received from investigators, or any memorandums that you made recording any oral conferences or reports that you had with investigators, be produced.

(Whereupon a short confegence, off the record, occurred between Plaintiff's counsel.)

Mr. Fidler: I will be glad to produce anything that I have in that respect. I know that I have no written reports of any investigators, but I think that I have some memoranda that I prepared from information given to
942 me by them. Do you wish that information at this time or later?

Mr. Freeman: If you can get it conveniently, I would like it now, because I might save considerable time on the part of Mr. Wacker and everyone present if we have that information quickly.

(Whereupon an intermission of about 15 minutes was had.)

Mr. Fidler: As I stated, there were no written reports by investigators, and I now hand to counsel for defendants the written memoranda of such reports as they gave to me.

Mr. Lindsey: Those are your own personal notes.

(Mr. Fidler hands papers to Mr. Freeman.)

Mr. Fidler: They are mine.

The Witness: Mr. Fidler, I think I gave an erroneous statement as to when Zimmerman left us. Now, I could not even be sure of this statement, but I think Zimmerman left us in the summer of 1940. I said 1937 or 1938. I know it was after that. He was not there, as I remember, when the Interference hearings took place. So it was in the summer of 1940 I think, if I may correct that date, that Mr. Zimmerman left our employ. Is that O. K.?

Mr. Freeman: Q. Was there anyone else present at
Mr. Fidler's home besides yourself, Mr. Fidler, Mr.
943 Thomasma and his attorney?

A. Krichiver and Mr. Travis.

Q. No one besides yourself and Mr. Fidler, connected with or associated with the plaintiff here?

A. You mean the Company? No. Travis was no longer in our employ and I think Mr. Fidler and myself were the only representatives of the company at that meeting.

Q. And what did Mr. Travis then tell you?

A. Well, Mr. Travis told us that Mr. Thomasma had called him up and wanted him to arrange for this conference.

Q. And what did Mr. Thomasma tell you at that conference?

A. Mr. Thomasma told us that, from information that he got, we were being framed, and that he would like to get the things worked out on a basis where we wouldn't be hurt, if he could avoid hurting himself.

Q. Was there any report made of that conference with Mr. Thomasma?

A. Mr. Fidler I believe called me the following day and said just as a matter of record, he wanted me to dictate a report to him of what had taken place and transpired at that meeting, and I believe I dictated such a report.

Q. And you have a copy of that report available now?

A. I think so. I haven't it here myself. I presume our attorneys may have it.

944 Mr. Fidler: It is available.

Mr. Freeman: May I have it, please?

Mr. Fidler: I have produced a letter from Mr. Wacker to Davis, Lindsey, Smith & Shouts, to my attention, dated November 5, 1940, and I would like the witness to state whether or not this is the report that was referred to. (Handing papers to the witness.)

The Witness: This is the report, but there are some marginal notes on page 4 that are not mine. I presume they are Mr. Fidler's; I don't know.

Mr. Fidler: They are mine, put on after I had received the letter from you.

The Witness: That is the report of November 5th, 1940. (Mr. Wacker hands said document to Mr. Freeman.)

(Whereupon a short intermission followed while Mr. Freeman and Mr. Ooms examined said document.)

Mr. Freeman: Q. You knew prior to the conference with Mr. Thomasma on about November 1st, 1940, that Thomasma was connected with Precision Instrument Company, and you knew it more than a mere suspicion?

A. Well, we had seen those papers of incorporation, and we certainly suspected it. There is no doubt about that.

Q. And you knew, prior to your meeting with Mr. Thomasma in November of 1940, that the early dates 945 alleged by Larson in his Preliminary Statement could not be substantiated?

A. That we knew?

Q. You, yes?

A. Before? Before this meeting with Thomasma?

Q. Yes.

A. That Larson's statements could not be substantiated, no, we did not know that.

Q. What did you mean, then, in this letter of November 5th, 1940, when you stated, "You and I both stated definitely that we knew the facts in the case and stated them as we knew them to be"?

A. Well, we told Mr. Thomasma very definitely that we felt that he was involved in a frame-up and a double-cross so far as we were concerned, and that at the time he was working for us, he sold us out and had gone to work; in his spare time and evenings he had gone to work for Precision; that he had been sent up on service work by us to Snap On in Kenosha and had taken advantage of his entire knowledge of the situation at our expense.

Q. And you knew all that prior to meeting with Mr. Thomasma?

A. Well, we believed that to be true, and we told him, we believed it to be true, and he admitted it.

Q. Did you discuss at that time, at Mr. Fidler's home, the theft of tools by Thomasma from your place of business?

946 A. I don't think so.

Q. That wasn't on Mr. Thomasma's mind at that time?

A. I don't think so.

Q. And he didn't want to clean his skirts, so to speak, of the theft of tools from your plant?

A. Well, I am not certain that he regarded that as a theft of tools, because he might have felt that he had taken demonstrators out, or something of that kind, I don't know, but that wasn't one of the things in our minds at the time of the meeting, I know that.

Q. You knew, at the time that you talked with Mr. Thomasma, the sum and substance of Larson's testimony which had been taken a week or so earlier, did you not?

A. I don't—What was the date that Mr. Larson's testimony was taken?

Mr. Freeman: I will give it to you in a minute.

The Witness: All right.

Mr. Ooms: Do you remember, Mr. Fidler?

Mr. Fidler: As I recollect, it started on the 24th of October and was completed, with some intermissions, on November 4th. That is, I am speaking of testimony taken on behalf of Larson, not the witness Larson's own testimony.

947 The Witness: And what was the date of your meeting?

Mr. Ooms: November 3rd.

Mr. Freeman: Sunday, November 3rd, 1940.

The Witness: A. Well, then, I would say that we did not know; I mean on the strength of the dates. I believe Mr. Larson was the last witness, is that correct?

Mr. Freeman: Q. Did Mr. Fidler explain to Mr. Thomasma the dates as alleged by Larson, and which had been given in the testimony taken, up to the time that you had your conference with Mr. Thomasma?

A. I think Mr. Fidler spoke to Mr. Thomasma about some alleged dates. Now, whether those were the dates alleged in the Interference or whether they were the result of testimony, I wouldn't know.

Q. Did Mr. Fidler show to Mr. Thomasma any photographic copies of any of Larson's paper exhibits in the case?

A. I don't think he did then, no.

Q. Did he ever show Mr. Thomasma any photographic copies of the exhibits produced on behalf of Larson, in your presence?

A. Well, later on, at a meeting in his office here, he had a photostatic copy of a drawing that Mr. Larson had signed and dated as of an early date, and I think that is the first time that I saw that drawing.

948 Q. How soon after the meeting of Sunday, November 3rd, 1940 was it that you again saw Mr. Thomasma?

A. The next time I saw him was in Mr. Fidler's office, I believe the latter part of November. As I remember it, it was November 28th. I am not sure. It was the only meeting, however, that took place at which Mr. Alberts and Mr. Joe Johnson and Mr. Allen and I were present, Mr. Fidler also; and Mr. Thomasma was then called in and asked some questions.

Q. You didn't see Mr. Thomasma between November 3, 1940 and November 28, 1940?

A. Whenever that last meeting was—I didn't see him between those meetings, no.

Q. Were you present prior to Mr. Thomasma making out his affidavit, which has been given to counsel for Snap-On, dated November 15, 1940?

The Witness: Was I?

Mr. Freeman: Q. Did you meet with Mr. Thomasma at any time prior to his executing the deposition-affidavit of November 15th, 1940?

Mr. Lindsey: Other than the conference at Mr. Fidler's on November 5th, 1940?

Mr. Freeman: Yes.

A. Yes, the only two times that I met with Mr. 949 Thomasma in that period was first at Mr. Fidler's home and then at his office.

Q. You did receive reports that Mr. Thomasma spent some time in your attorney's office prior to the execution of the affidavit of November 15, 1940?

A. Well, I presume he saw him, I don't know where, whether he saw him at his home in the evening or whether he saw him at his office.

Q. Have you had occasion to see the affidavit of November 15, 1940?

A. I may have seen it. I wouldn't be sure. I know I saw the drawing and I know that Mr. Fidler did secure—I believe Mr. Fidler did secure such an affidavit. I don't remember whether I read it over in detail or not.

Q. You referred to a drawing. I take it that that is the drawing that Larson produced as his Exhibit 27 in the Interference?

A. I wouldn't know, but it evidenced his early date of conception.

Q. That is a drawing on a large brown piece of paper?

A. I think it was about so long and so wide (Witness indicates width and length of about 2 or 3 feet each.)

Q. And that is the drawing that Thomasma said he made?

A. That is the one.

Q. And you were informed that that drawing was 950 made by Thomasma and not by some school boy, is that correct?

A. That is what Thomasma stated, that he had made the drawing himself.

Q. And you knew that Larson had testified that he had a school boy make the drawing?

A. I think that was—I was so informed by Mr. Fidler, as I remember it, yes.

Q. And you knew that at or about November 15, 1940, when Mr. Thomasma executed his affidavit?

A. Well, I knew it, I presume shortly thereafter.

Q. You knew that that drawing then produced by Larson as his Exhibit 27 was not in fact made as testified to by Mr. Larson?

A. Well, I knew that Mr. Thomasma said it wasn't, but I didn't know that that was a fact. I mean we weren't in any position at that time to prove the thing.

Q. Did you at any time see a drawing made by Thomasma, not the drawing that Larson produced as his Exhibit 27, but another drawing which your attorney used for the purpose of comparing the drawing, Exhibit 27, with the drawing that Thomasma produced?

A. I don't think so. I don't remember having seen such a drawing.

Q. Were you ever told by Mr. Fidler that there was no question but what the drawing, Exhibit 27, pro-951 duced by Larson was in fact made by Thomasma?

A. I think Mr. Fidler believed that it was.

Q. And he so told you?

A. Well, I think he told me that he thought so.

Q. And he told you that shortly after November 15th, 1940?

A. I think that is correct.

Q. And he told you that prior to ever executing any of the agreements herein involved, Exhibits 4 and 6 which are attached to the pleadings filed in the Snap-On case?

A. That is right.

Q. And you relied upon Mr. Fidler's statement to you that the drawing, Larson's Exhibit 27, was not made in accordance with the sworn testimony of—

Mr. Lindsey: I object to that.

Mr. Freeman: Wait until I get through, please.)

Mr. Lindsey: I object to so much of the question at this time, because it is a misstatement of what the witness testified to.

Mr. Freeman: Wait until I ask the question, won't you, please? We will get along lots better. Now Mr. reporter, before I was interrupted, will you please read.

(Pending question read by the Notary.)

Mr. Freeman: Q. (Continuing) —Larson?

952 Did you get your full objection in there, Mr. Lindsey?

Mr. Lindsey: No. Go ahead and finish your question now. Have you finished your question?

Mr. Freeman: Yes.

Mr. Lindsey: I object to the question as being a misstatement of what the witness said.

Mr. Freeman: Q. Tell me what you understood, then, as a result of the information that Mr. Fidler gave you with respect to Larson's drawing, Exhibit 27?

A. Well, I felt that the drawing was certainly under strong suspicion.

Q. Merely suspicion?

A. That is correct.

Q. How about the use of the words "frame-up" that were given to you by Mr. Thomasma? Was that merely suspicion?

A. That was what he told us.

Q. And did you accept his story, that there was a frame-up, merely as suspicion?

A. Certainly.

Q. You didn't believe Thomasma, then?

A. I couldn't be sure. The difference between alleging something and being able to prove it are two very different things, and Mr. Fidler, in full answer to your

953 question, and Mr. Lindsey both cautioned Mr. Allen and me, on several occasions, before the meeting in his office, not to accuse anybody of either a frame-up or of perjury, because we might find ourselves sitting with a very fancy lawsuit in our laps if we did.

Q. Did they likewise caution you not to accuse Mr. Thomasma of stealing property belonging to your company?

A. No. I made that statement to him before I discussed it with them. That was of an entirely different and earlier time.

Q. When you say you made that statement to him, you are referring to the statement made by you to Mr.

A. To Mr. Thomasma.

Q. —Thomasma, that he had taken property?

A. Yes.

Q. Not belonging to him?

A. Yes.

Q. What was the reason for your counsel admonishing you not to make any accusations against Mr. Thomasma?

A. Do you want to know as to how that conversation came up?

Q. That is all I am interested in, Mr. Wacker. Go right ahead.

A. All right. I will be very glad to tell you.

954 Mr. Fidler asked me to come down to his office and see him, as I remember it, which I did, and we discussed this whole situation, and I expressed I believe considerable impatience with a situation where it looked as if we were being pushed around, being put to considerable expense and apparently weren't in a position to do anything about it, and I asked him what we could do, in his opinion, to prove conspiracy or perjury, and he said that would be a very expensive proposition, to go out and secure that proof, if we could get it, and that the question was whether we wanted to go ahead and spend the money, to get the necessary proof, to make charges of that kind stick, but we were not then in any position to make them stick.

Q. When was that admonishment given to you?

A. Prior to our meeting with Mr. Alberts and Mr. Johnson, Mr. Thomasma, Mr. Fidler, Mr. Allen and myself, in Mr. Fidler's office.

Q. But subsequent to the execution of the affidavit of November 15th by Thomasma, is that correct?

A. I think so. I imagine so.

Q. In other words, you had Mr. Thomasma's sworn statement that he had made the drawing, Larson's Exhibit 27, at the time that you were given this caution signal by your counsel?

955 A. I think so.

Q. And you likewise had the reports of the detective's investigation of Larson and Carlsen and Thomasma, at the time they gave you this caution signal?

A. Well, that in a very general way. I wasn't familiar with the detail of that.

Q. And you then had the sum and substance of the Larson testimony conveyed to you by your counsel?

A. That is right. As a result of which we were both strongly suspicious.

Q. And as a result of that suspicion, you met with counsel for Snap-On and Mr. Joe Johnson, president of Snap-On, is that correct?

A. I don't know if it was a result of that suspicion. I think that was the result of conversations between Mr. Alberts and Mr. Fidler.

Q. At the time you met with Mr. Joe Johnson and Mr. Alberts did you say that you were predicating your meeting upon some suspicion that you had?

A. I don't remember using any such words. In fact, I think Mr. Fidler made the introductory remarks, Mr. Fidler, Mr. Alberts and Mr. Johnson. I don't believe I said anything then.

Q. Do you recall hearing anyone using the word
956 suspicion or any other word that would have the same significance, at the conference where you, Mr. Allen, Mr. Fidler, Alberts, Johnson and Thomasma were present?

A. I don't remember the word, the use of the word, but I do know that Mr. Fidler explained to Mr. Alberts and to Mr. Johnson that Mr. Thomasma had come to him with a story that he felt they ought to hear.

Q. And you were cautioned by your counsel that a case of perjury, that is; making it stick—

A. Proving it.

Q. —or getting a conviction, would require considerable proof?

A. Right.

Q. And likewise would involve considerable expense?

A. That is right.

Q. You know, do you not, that either the State or the Government will follow through on matters of perjury without any expense to you?

A. I imagine you would have to have proof to get them to do that.

Q. You had Thomasma's affidavit, did you not?

A. That is right.

Q. You had that affidavit and you were relying on that affidavit when you called Mr. Johnson and Mr. Alberts over to Mr. Fidler's office, did you not?

957 A. No. We made no statements on behalf of that affidavit, because in the first place, we knew that Mr. Thomasma had been a disloyal employee of our own, and to the extent that his word could be substantiated with something that we weren't certain about at all.

Q. Do you want to say here now that at the time that you met with Mr. Joe Johnson and the others in Mr. Fidler's office, that you weren't certain that Larson had perjured himself?

A. I was very suspicious, but I couldn't prove it. They are two very different things, it seems to me.

Q. And yet your attorneys advised you not to accuse anyone of perjury?

A. That is right.

Q. Had the matter of perjury been discussed between you and your counsel prior to meeting with Mr. Alberts, Mr. Johnson and the others on November 28th, 1940?

The Witness: Had it been discussed?

Mr. Freeman: Yes.

A. Yes. I asked Mr. Fidler if he was in a position to prove it. He said he wasn't.

Q. And you were willing to rely on the information that you then had, which you say could not be proved, in negotiating with Sanp On and Precision for a settlement 958 of this case?

A. Mr. Fidler felt, as I remember it, as a matter of courtesy between attorneys, that Mr. Alberts should be allowed or permitted, if he so desired, to hear Mr. Thomasma's story.

Q. And you likewise heard Mr. Thomasma's story?

A. I was present, because Mr. Alberts I believe wanted to have his principal present, and Mr. Fidler suggested that Mr. Allen and I be there as well.

Q. You knew, did you not, that Thomasma produced another drawing to show that the author of the drawing that he then produced and the author of Larson's Exhibit 27 were one and the same? Did you not?

A. No, I don't. There may have been some discussion of that, but I don't believe I saw the other drawing, if there was one. I wouldn't say if such a discussion took place or not; I don't know.

Q. Do you recall having any conversations with your counsel, with respect to the other drawing?

A. You mean the one that Larson had signed?

Q. No. The one that Mr. Thomasma had produced?

A. I believe comparisons of Mr. Thomasma's hand writing were made. I believe Mr. Fidler told me that.

Q. And who made those comparisons?

959 A. I believe a handwriting expert.

Q. And you were informed that the handwriting expert had concluded that whoever made the drawing produced by Mr. Thomasma made Larson's Exhibit 27, is that correct?

A. No. I was not advised to that effect. I was advised to the effect that there was similarity there, but that the handwriting expert had refused to commit himself.

Q. Do you know who that handwriting expert was?

A. No, I do not. I may have known his name at the time, but I don't know now.

Q. Did you get a copy of any report from the handwriting expert?

A. No, sir.

Q. Do you know whether your counsel ever got a report from the handwriting expert?

A. I do not. I know that he got verbal reports. I don't know if he got any written reports.

Mr. Freeman: I can again save some time, if counsel for Plaintiff will state whether or not the reports were in writing or oral from the handwriting expert, and if in writing, will they kindly produce such reports?

Mr. Fidler: There was no formal report rendered by the handwriting expert. He made some notes that don't 960 mean anything to me, which he turned over to me and which I will be glad to produce.

(Whereupon a five-minute intermission was taken.)

Mr. Fidler: I now produce a yellow sheet, which is the only document that the handwriting expert handed to me. (Mr. Fidler hands said document to Mr. Freeman.)

Mr. Freeman: Will you read Mr. Fidler's statement, Mr. reporter.

(State of Mr. Fidler read by the reporter.)

Mr. Fidler: And it is the only thing in the nature of a written report that he gave to me.

Mr. Freeman: Mr. Fidler, can you give me the name of the handwriting expert you employed?

Mr. Fidler: It was Mr. Salmon or Sammon. I think his first name is Rutherford.

Mr. Freeman: We ask the reporter to mark, as Snap-On's Exhibit 11, a photostatic copy of the letter of Automotive Maintenance Machinery Company, dated November 5, 1940, referred to by the witness Wacker; also as Snap-On Exhibit 12, the document produced by Mr. Fidler as being the only report given to him by the handwriting expert.

Mr. Fidler: The only written report.

Mr. Freeman: The only written report.

(Said documents were thereupon marked by the Notary

as Snap-On Exhibits 11 and 12, respectively, for identification.)

Mr. Freeman: We ask that a photostatic copy be substituted for Exhibit 12, subject, however, to counsel for plaintiff producing at the trial the original.

Mr. Fidler: Yes.

Mr. Lindsey: All of the originals will be produced at the trial. I should think we should have an understanding that you will produce the originals of anything that we have marked for identification, too.

Mr. Freeman: Right.

And as Snap-On's Exhibit 13, twelve sheets of paper, having reports thereon dated August 12, 1940, September 3, 1940, September 9, 1940, September 17, 1940 and September 30, 1940, produced by counsel for plaintiff.

(Said papers were thereupon marked by the Notary as Snap-On Exhibit 13 for identification.)

Mr. Freeman: Q. Did you ever receive a report from your Mr. Allen, who is here present, as to his visiting the Precision plant?

A. I think that he told me that he and one of our salesmen had stopped in Des Plaines to take a look at the place where Precision were making wrenches. I remember his having made such a statement to me.

Q. And do you recall the salesman's name?

962. A. I wouldn't be certain of that, no.

Q. There was no written report given you by Mr. Allen with respect to his visit to Precision?

A. Not that I remember.

Q. Have you had your records checked with respect as to whether or not a written report was given you?

A. If those records were checked, they were checked by Mr. Fidler, because he has all of our records down here.

Q. That is the records of your company in connection with the Interference, Larson v. Zimmerman, as well as this particular suit, have now been turned over to Mr. Fidler?

A. As far as I know.

Q. And such documents or papers were turned over recently?

A. Some of them. Others previously. I believe you recently asked for certain things and Mr. Fidler sent representatives of his office to our office to go through our files, and as far as I know, he has everything.

Q. When you say to go through your files, does that mean all of the files having to do with this interference and this case that were in your plant or in your office, have now been removed to your counsel's office?

A. As near as I know. I don't know. I wasn't in my office, and I was here, when it was done, but I know files have been brought down here and I know previous to that time a considerable number of them were already sent
963 here. If there is a written report from Mr. Allen to me, I don't remember it, and if it exists, the chances are it is in my office.

Q. Would you mind during the luncheon hour, or before that, calling your office and finding out how much was paid to the handwriting expert for the services rendered by the handwriting expert?

Mr. Lindsey: We can give you that information, from our own records, if that will satisfy you.

Mr. Freeman: That will satisfy me, and likewise Mr. Lindsey, as long as you are getting it from your own records, which are perfectly acceptable to us; how much was paid to any detective agency or other investigators?

Mr. Fidler: Yes, surely.

Mr. Lindsey: No objection.

Mr. Freeman: Q. You were present on November 28, 1940, during an examination of Mr. Thomasma by Mr. Alberts here, at your attorney's office, is that correct?

A. No. I would say that Mr. Fidler asked the questions at that conference, not Mr. Alberts.

Q. In your presence?

A. Yes, sir.

Q. And did Mr. Alberts ask Mr. Thomasma anything?

A. I don't think that he did. I think it was discussed originally and I think Mr. Alberts indicated that it
964 would be all right with him for Mr. Fidler to ask the questions. I believe Mr. Fidler asked all of the questions and when he finished, he asked Mr. Alberts if he had any questions to ask and, as I remember it, Mr. Alberts said he did not.

Q. And what was the nature of that examination by your attorney, in your presence, of Mr. Thomasma?

A. Well, it was asking him as a generality what about this drawing, for one thing, and also about the development of the wrench and some of the facts that had come

out I believe in the taking of testimony with respect to the identification of certain castings and matters of that kind.

Q. And you heard Mr. Thomasma state that the drawing, Larson's Exhibit 27, was made by himself?

A. The one that Larson had signed as his and put the early date on, Mr. Thomasma said that he had made that, yes.

Q. And did you hear Mr. Thomasma say that his brother, who has an office in this building, saw the drawing being made by George B. Thomasma?

A. I do not remember that. He might have. I know that his brother was mentioned, I think—

Q. Was there any mention made at this conference on November 28, 1940, of the drawing made by Thomasma, which your attorney had used for purposes of com- 965 parison with Larson's Exhibit 27?

A. I don't remember any mention of a drawing—I remember comparison of handwriting, but I don't remember that another drawing was discussed.

Q. Tell us now just what you do remember with respect to the comparison of the handwriting.

A. Well, it was suspiciously similar, but that our handwriting expert had not definitely committed himself and did not want to, without making a further investigation.

Q. Did Mr. Fidler, in examining Mr. Thomasma as you state he did, tell Mr. Thomasma that he had had an investigation made by a handwriting expert, of Thomasma's handwriting?

A. I wouldn't be sure about that. I believe he told that to Mr. Alberts and Johnson. Whether Thomasma was in the room at the time or not, I don't know.

Q. Did he use the words "suspiciously similar," or did he?

A. I wouldn't remember that. I mean he indicated that he had reason to be suspicious of it.

Q. He did not say that whoever made the drawing, Exhibit 27, made the drawing or other document that he used for purposes of comparsion, did he?

A. I don't remember anything about another drawing being used for purposes of comparison.

Q. That, you don't remember Mr. Fidler saying 966 that he had a suspicion, do you?

A. Well, I presume—well, he said it to me, anyway. I know he was suspicious of it.

Q. Were you in your own mind satisfied that Larson had falsified in his testimony prior to the time that you met with Mr. Joe Johnson on November 28, 1940?

A. Well, I thought there was something very peculiar in the State of Denmark, yes.

Q. Something rotten in Denmark, so to speak?

A. I was suspicious of that, very definitely, yes.

Q. And it was upon that suspicion that you said something had to be done about the Interference case?

A. I don't remember saying that something had to be done. We were doing everything we could do to protect ourselves.

Q. Well, tell me just what you were doing at about the time that you discovered that Larson's testimony was not the whole truth.

Mr. Lindsey: I object to the question, because the witness has not testified to that fact at all. I think it is time now to put the questions honestly. This thing of having sensational developments and telling the judge that we set testimony, serve notice for the day before Christmas, and those kind of things—I think we might just as well be honest about this course of the examination and what we say to the judge.

967 Mr. Freeman: Q. When did you learn, Mr. Wacker, that Mr. Larson's testimony was not the whole truth?

The Witness: You mean when did I become suspicious of it?

Q. When did you first learn that Larson's testimony was not the whole truth?

The Witness: When did I definitely learn it? Is that what you want me to say?

Mr. Freeman: No.

Q. I want you to tell me when you learned that Larson's testimony was not the whole truth.

A. Well, I had every reason to believe that it was not the whole truth when Larson conceded priority.

Q. You had reason to believe that it was not the whole truth, prior to that time, did you not?

A. I told you that I had been suspicious that it wasn't.

Q. And you had reason to believe, prior to the time that he signed a concession of priority, that his testimony was not the whole truth?

A. Yes; I was suspicious of that and believed that it wasn't.

Q. You received a copy of Mr. Lindsey's letter to Mr. Alberts dated December 19, 1940, did you not?

The Witness: I would like to see the letter.

(Document handed to the witness.)

968 A. I don't think I ever got a copy of that letter.

Mr. Freeman: Q. You testified that you were being pushed around and being put to great expense in connection with this Interference and couldn't do anything about it. Do you recall so testifying this morning?

A. Well, I remember objecting to Mr. Fidler that I thought it was a peculiar situation that we were being victimized by what appeared to be a phony story and had no way apparently of protecting ourselves and cutting off the expense on it.

Q. And what do you mean by being pushed around?

A. Well, I mean by being victimized.

Q. And who pushed you around?

A. I would think that Mr. Larson and his witnesses certainly pushed us around, in the light of subsequent developments.

Q. When did you tell Mr. Fidler that you were being pushed around?

A. Well, it was self-evident to both of us. I don't remember when we first discussed that. I think that was following the—I don't remember when that conversation took place. It was either—it might have been following the concession of priority. It might have been following Mr. Alberts' withdrawal from the case; I wouldn't be sure.

Q. And it might just as well have been prior to 969 the time you were cautioned by Messrs. Lindsey and Fidler with respect to making an accusation of perjury?

A. Well, they cautioned us prior to that meeting not to make such an accusation. I don't know—

Q. Well, this pushing around, it could have occurred prior to that admonishment by your counsel?

A. Well, I used a phrase. I don't know that I actually used those words. I used a phrase that we were being taken advantage of, the meaning that I had in mind.

Q. And when did you feel that you were being taken advantage of by Larson?

A. Well, we were suspicious of it at the taking of the testimony; I told you.

Q. When did you have your first suspicion with respect to Larson's dates?

A. Our first suspicion with respect to Larson's dates was when he first alleged them.

Q. And when the Preliminary Statement was available to your counsel?

A. That is right.

Q. And thereafter you began, through your counsel, to make an investigation by hiring investigators or detectives, is that correct?

A. That is correct.

Q. And it was thereafter that you ordered a Cer-
970 tificate of Incorporation of Precision, to see who were its incorporators?

A. I don't know if it was afterwards or before, because we were suspicious of Thomasma, his connection with Precision even before that, as you will remember.

Q. Even prior to the declaration of the Interference?

A. I think we had been told prior to the declaration of the Interference that Thomasma was connected with this Des Plaines outfit. I believe that is so.

Q. Did you receive a report from your attorney Mr. Fidler of his conference with Mr. Alberts on November 21, 1940, in this office?

A. Not in detail. I believe I knew that there was such a conference.

Q. Did you know the purpose of such conference?

A. The only purpose that I ever knew with respect to that conference was to permit Mr. Alberts to become acquainted with Mr. Thomasma's story.

Q. Was that report in writing from Mr. Fidler to you?

A. I don't think it was. I don't recall it.

Q. Did you know prior to the conference between Mr. Fidler and Mr. Alberts, that Mr. Fidler was going to arrange such a conference and present to Mr. Alberts the facts, or to acquaint him with the facts as presented to you or to your counsel by Mr. Thomasma?

971 A. I don't remember that. I would doubt it, but I don't remember it.

Q. Do you recall now the report given to you as a result of the November 21, 1940, conference between Alberts and Fidler?

A. A verbal report.

Q. What is the sum and substance of it?

A. That such a meeting had taken place and as I remember it, as a result of that meeting, Mr. Alberts was going to consult Mr. Johnson to see if the arrangements could be made for them to hear Thomasma's story.

Q. Did you get any—do you recall any report given to you by Mr. Fidler, as to what Mr. Alberts said on November 21, 1940?

A. No.

Q. At his conference.

A. No. I never had a report going into the detail of that.

Q. Did you get any report from Mr. Fidler as to what he told Mr. Alberts?

A. No.

Q. The only report that you can recall is that there was some meeting on November 21, 1940?

A. There was some meeting and I believe it led up to the subsequent meeting.

972 Q. And what was the purpose of the subsequent meeting which was held on November 28, 1940?

A. The purpose of that was to permit Mr. Alberts and Mr. Johnson to hear Mr. Thomasma's story.

Q. Why were you present at that meeting, if you recall?

A. Why was I present?

Q. Yes.

A. Why, because Mr. Fidler I believe suggested it.

Q. And Mr. Allen was likewise present?

A. Mr. Allen was present.

Q. Do you recall any of the statements that you made either to Mr. Johnson or to Mr. Alberts, at that meeting?

A. No, sir.

Q. You did talk to Mr. Johnson, did you not?

A. I said, "How do you do" to him.

Q. Did you talk to him at all about the Interference?

A. I don't think so.

Q. Did you tell him at all how you felt?

A. I do not recall telling him.

Q. Did you tell him about the suspicions that you had with respect to Larson's testimony?

A. Well, I think that Mr. Fidler's questioning of Mr. Thomasma clearly brought that out. I didn't have to add to that.

Q. You said nothing at all?

973 A. Not that I recall.

Q. Do you recall Mr. Johnson telling you that his company had always conducted its business on a high plane?

A. Yes, sir.

Q. And what was your answer to that?

A. I don't think I made any answer to that.

Q. Did you talk at all to Mr. Johnson?

A. Well, I remember saying, "How do you do" to him and "Goodbye," and most of the time that I was there I listened.

Q. You were perfectly willing to let Mr. Fidler do the talking for you, at this conference?

A. That is right.

Q. And whatever Mr. Fidler said, you, of course, by your silence said O.K. to, is that correct?

A. I didn't object to anything he said, that I remember.

Q. And Mr. Fidler was then speaking for you and for the plaintiff in this case?

A. As nearly as I know and mostly—the only speaking that I remember was asking questions.

Q. Do you recall Mr. Fidler saying that something had to be done about this Interference?

A. No, I don't think so, at that time.

Q. Do you recall Mr. Alberts telling Mr. Fidler that he would certainly recommend that a concession of priority be given by Larson to Zimmerman?

974 A. That Mr. Alberts said that?

Q. Yes.

A. No, I do not.

Q. Do you recall Mr. Fidler saying that there would have to be more than a mere concession of priority in this case?

A. No, I don't remember anything—

Q. Do you recall Mr. Fidler saying that your company had spent a great amount of money in investigations?

A. No, I don't recall that.

Q. Do you recall Mr. Fidler saying that you would not be satisfied with a concession of priority?

A. No, I don't think the question of concession of priority was mentioned.

Q. Do you recall Mr. Alberts stating that he would certainly withdraw as counsel for Larson?

A. Yes, he definitely said that, that if Mr. Thomasma's

story was substantiated, that he would withdraw as attorney for Precision and Larson.

Q. What else do you recall that Mr. Alberts stated, at this conference?

A. Well, that is about all that I recall that he stated.

Q. And all you recall that Mr. Johnson said was that his business was conducted on a high plane?

A. Well, when he came in, he said he was entering the—
that he wanted us to realize that he had gotten into this
975 thing with clean hands, that Snap-On had always conducted their business on a high plane, and then when he left, after he heard the story of Thomasma, he said that if Mr. Thomasma's story is true, this thing smells to the high heavens. Now, those are the two things that I remember Johnson saying.

Q. Do you recall Mr. Alberts asking Mr. Thomasma whether Thomasma had ever acquainted either Alberts or Snap-On that he was connected with Precision?

The Witness: Would you repeat that, please?

Mr. Freeman: Read the question.

(Pending question read by the Notary.)

A. No, I don't.

Q. After the conference of November 28, 1940, tell us who dictated the policy as to what plaintiff wanted from Larson.

The Witness: What he wanted from Larson?

Mr. Freeman: Yes.

A. Well, Mr. Alberts had withdrawn from the case at that previous meeting, so he was no longer the attorney of Precision, in accordance with his statement to us, so we obviously did not know whom to talk to about the thing. So as I understand it, the next thing that happened later, some days later, during Mr. Fidler's illness at his home, Mr. Hobbs got in touch with him and suggested a settlement. That was the information that I received from Mr. Fidler.

Q. Now, just tell me who made the suggestions on
976 behalf of you or your company as to what you wanted Larson to give you as a result of those—

A. I think the original suggestions were made by Mr. Hobbs, suggesting a settlement.

Q. Now, over and above the suggestion of a settlement, who stated what the terms of the settlement were going to be?

A. As I understand it, Mr. Hobbs originally made certain suggestions that later on apparently his clients were not willing to go through with.

Mr. Freeman: Did Hobbs ever—

Mr. Lindsey: I don't think the witness finished his answer.

Mr. Freeman: Go right ahead, Mr. Witness.

The Witness: Well, I don't think that—Mr. Hobbs, in his original suggestion, suggested the payment of a royalty.

Mr. Freeman: Q. That was Mr. Hobbs' suggestion?

A. In this letter that I believe that he wrote to Mr. Fidler.

Q. And who dictated the policy of the settlement?

A. You mean the final settlement?

Q. Yes, in your behalf or in your company's behalf.

A. I did, in connection with Mr. Fidler and Mr. Lindsey, I received their advice and finally, to get the thing
977 wound up, we agreed to this settlement.

Q. Do you happen to have a copy of the letter that you just testified to, where Mr. Hobbs suggested paying a royalty?

A. I haven't a copy of it. I think Mr. Fidler has a copy of it or has the previous letter, I am not sure.

Q. Are you satisfied that there was such a letter and that the suggestion with respect to paying a royalty came from Mr. Hobbs?

A. That is my understanding.

Q. And who gave you that understanding?

A. I think I saw the letter.

Q. And who suggested that the gauge application of Mr. Larson be assigned to the plaintiff here?

A. Who suggested what?

Q. That a gauge application of Mr. Larson's be assigned to plaintiff?

A. Well, I think that came out of our conferences together. I don't know who made the first suggestion on that.

Q. Mr. Hobbs never suggested that his client Larson turn over a Larson application on a gauge that was not involved in this Interference, did he?

A. I think that when Mr. Hobbs informed us that his client did not have the money to pay royalties, that that was thought of in lieu of royalties. That is my recol-
978 lection.

Q. When Mr. Hobbs said that his client did not

have any money to pay a royalty, was that in a letter form or orally from Mr. Hobbs?

A. I don't recollect. I don't know if Mr. Fidler told me that. I imagine that was a result of telephone conversations or conferences that took place between Mr. Fidler and Mr. Lindsey and Mr. Hobbs.

Q. The letter you are talking about, was it something that occurred prior to the time of the settlement or a royalty to be paid thereafter?

A. Well, it was a royalty to be paid on all unfilled orders, as I remember it.

Q. Do you recall requesting that Snap-On pay to plaintiff here the difference between your selling price and Snap-On's selling price of some two or three dollars per torque wrench?

A. No.

Mr. Lindsey: May I ask, are you still referring to the letter now, Mr. Freeman?

Mr. Freeman: No.

The Witness: A. No, I don't recall any such discussion.

Mr. Freeman: Q. Do you recall asking Snap-On to pay some money to your company, not for the future, but for the past?

A. I don't recall asking Snap-On to pay us any-979 thing, because—

Q. Do you recall—Pardon me.

A. It was a case—it was between ourselves and Precision, at that time.

Q. Do you recall whether or not your attorney submitted a joint agreement on the part of Snap-On and Precision, looking for a settlement of this case?

A. Ultimately, yes.

Q. Do you recall Mr. Alberts advising your counsel that Snap-On did not want to be a party directly tied up with Precision in making any settlement with your company?

A. I don't recall that specifically. No. I think that Mr. Alberts had clearly withdrawn from the case and so we were under the impression that he wanted out on that, but I don't know—

Q. There is no question in your mind but what Mr. Alberts wanted anything to do with the Interference or the Larson application after he found out that there was

something phony about the Interference dates, is that correct?

A. That was his statement.

Q. And you understood it that way, did you not?

A. Well, I accepted it as such.

Mr. Lindsey: That is another very misleading statement, the question. Read the question, will you, Mr. Reporter.

Mr. Freeman: I wish to say I don't mean to mis-
980 lead him.

(Question read by the Notary as follows:

"Q. There is no question in your mind but what Mr. Alberts wanted anything to do with the Interference or the Larson application after he found out that there was something phony about the Interference dates, is that correct?")

Mr. Lindsey: That is, if he found out it was phony, the witness testified.

Mr. Freeman: It is 12:30, gentlemen. How about luncheon?

The Witness: Mr. Lindsey just called attention to the fact that I had previously testified that Mr. Alberts had said that if this was found to be—if Thomasma's story was found to be true, then, he would withdraw from the case.

Mr. Freeman: Q. And when you were advised that Mr. Alberts did withdraw, you then knew that the story that Larson's testimony was phony was correct, did you not?

The Witness: Wait a minute.

Mr. Lindsey: That is another misleading question, because Alberts never did withdraw.

The Witness: I was told officially that Mr. Alberts had not withdrawn, but that Mr. Hobbs was representing Precision.

Mr. Freeman: Q. And who told you that?

A. Mr. Fidler.

Q. That Mr. Hobbs was representing Precision?

A. Mr. Fidler and Mr. Lindsey, in these negotiations which he had suggested, toward a settlement.

981 Q. Do you recall Mr. Alberts telling you on November 28, 1940, when he entered into a conference with you and your attorneys, that he was there representing Snap-On solely?

A. I recall his saying that, that his first loyalty, if you like, was to Snap-On, I don't remember the words he used,

but I got that impression, that he said he was there representing Snap-On, yes.

Q. And that he was not representing Precision or Larson at that conference?

A. Well, he had been up until then, and he said that he would cease to represent them if Thomasma's story proved to be true.

Q. And you so understood it?

A. Yes.

982 Mr. Lindsey: I have had our bookkeeper investigate the books and he reports that he paid to the investigator, Mr. Wise, the sum of $4,704.35, in connection with his investigation, concerning which the witness was interrogated this morning.

The books also show, it is reported to me by our 983 bookkeeper, that the handwriting expert, Mr. Salmon, was paid the sum of $50.00 for services rendered in connection with the matter, concerning which the witness was interrogated this morning.

Mr. Freeman: Mr. Lindsey, I wonder if we might get the date when Mr. Salmon was paid and when that service was rendered, and likewise by the investigator who was paid the sum of $4,704.35?

Mr. Lindsey: Over what period of time?

Mr. Freeman: Yes, starting when and terminating when?

Mr. Lindsey: Yes.

The first payment was made to Mr. Wise on August 13th, 1940 and the last payment to Wise on January 6, 1941.

Mr. Salmon's bill was paid December 28, 1940.

Mr. Freeman: Q. I take it that Mr. Fidler arranged for Mr. Thomasma to be present on November 28, 1940?

A. I presume so, yes.

Q. You had nothing to do with it?

A. No. That was November 28th, that you mentioned?

Mr. Freeman: That is right.

The Witness: Yes.

Mr. Freeman: Q. The only meeting you arranged as between Fidler and Thomasma was the one that was 984 had on November 3rd at Mr. Fidler's home?

A. The one that Travis approached me on, yes.

Q. Do you recall at the meeting of November 28th, 1940, Mr. Fidler telling Mr. Alberts that AMMCO, or your

company, had investigators out on this matter and had spent some five thousand dollars in making that investigation, and that he would not be interested in just a concession of priority?

A. I am sure that no such statement was made.

Q. Do you recall Mr. Fidler saying that Mr. Wacker had gone so far in this matter that he wanted things settled right away?

A. No. Not at that meeting.

Q. And that if it was not settled right away, he would have to unleash the dogs?

A. No.

Q. Do you recall Mr. Fidler telling Mr. Alberts that he had already interviewed the Patent Office with respect to Larson's testimony?

A. No.

Q. Or that he had had someone else interview the Patent Office with respect to Mr. Larson's testimony?

A. No, sir.

Q. Do you recall Mr. Fidler stating that "Mr. Wacker wants us to report the matter to the District Attorney, unless we can get a satisfactory settlement"?

A. No, sir.

Q. No such statements were made?

A. Not in my hearing, no.

Q. Was there anything said about a District Attorney?

A. Not to my knowledge.

Q. Was there anything said about reporting Larson's testimony to the Patent Office?

A. No, sir.

Q. Or that it might be reported to the Patent Office?

A. No.

Q. Or that it was reported to the Patent Office?

A. No, sir.

Q. What took place at this conference on November 28th, 1940, over and above the examination of Mr. Thomasma by Mr. Fidler as you have already testified; what else was said?

A. I don't think anything of importance.

Q. Was anything talked about a settlement?

A. Not at that time, no.

Q. Was there anything said by Mr. Fidler or yourself as to what the plaintiff in this case wanted?

A. No, sir.

Q. (Continuing) From either Larson or Snap-On?
986 No, sir.
Q. Nothing at all?
A. Not a thing.
Q. What was the purpose of this meeting on November 28th, 1940?
A. Well, the purpose of the meeting was to permit Mr. Alberts and Mr. Johnson to make up their own minds as to whether in their opinion Mr. Thomasma was telling the truth or whether he wasn't.
Q. I believe you testified this morning that you never saw a copy of Mr. Lindsey's letter to Mr. Alberts dated December 19th, 1940, and I now ask you whether you ever saw a copy of Mr. Alberts' letter to Mr. Lindsey dated December 19, 1940?
Mr. Lindsey: Show him the letter.
Mr. Freeman: You have the original, Mr. Lindsey. Why don't you give him that one?
Q. Mr. Wacker, I will hand you a carbon copy of the letter, in the absence of the original, and you might look at it and then answer the question. (Mr. Freeman hands yellow sheet to the witness.)
A. No. I never saw a copy of that letter, I can testify, without reading it, because I don't remember any letter with the phrase "Goodwill toward all mankind" in it. I think I would have noticed that.
987 Q. This morning Mr. Lindsey said that he had nothing to do with this case until I believe December 10th, 1940. Did you have anything to do with getting Mr. Lindsey personally into this case?
A. No. The way that happened was this; Mr. Fidler was at home with a bad back, and following the meeting of November 28th, Mr. Fidler was confined to his home and at that time Mr. Lindsey came in; first because of Mr. Fidler's disability and secondly, because I think that we wanted his advice when it came to the question of settlement.
Q. Do you recall now who suggested that Larson turn over to Snap-On his Application covering a gauge, which application was not involved in the Zimmerman-Larson Interference?
A. No, sir. Those negotiations were conducted with Mr. Hobbs and I wasn't in on them, although they reported

to me from time to time as to the progress or lack of progress that was being made.

Q. And any changes or concessions made from time to time, that is, after an agreement was submitted to Mr. Hobbs and he objected to it, those objections were made known to you?

A. Well, I don't know if all of his objections were made known, but I know before we made any further concessions on our part, I am sure they were made known.

Q. You gave approval to any concessions that 988 might have been made by your counsel in that case?

A. That is right.

Q. To Mr. Hobbs?

A. I believe that to be so. I think they took up everything of that nature with me.

Q. And you knew what was asked for in the first agreement that was submitted, and I use the word agreement as a proposed agreement?

A. Yes.

Q. You knew that?

A. That is—

Mr. Lindsey: That is the one that Mr. Hobbs submitted to us?

The Witness: Yes.

Mr. Lindsey: Is that the one you are speaking of?

Mr. Freeman: Well, as long as you have talked about an agreement submitted by Mr. Hobbs, have you a copy of it?

Mr. Lindsey: Let us get the record straight on that, Mr. Freeman.

The Witness: You have a copy of that letter.

Mr. Freeman: What I have asked for is the—I take it, from your explanation, Mr. Lindsey, that Mr. Hobbs submitted an agreement to you people?

Mr. Lindsey: He submitted a proposition, yes.

Mr. Freeman: Well, whether it is a proposition, 989 agreement or what not, I wonder if I might have what he submitted to you?

Mr. Lindsey: I would be glad to give you anything we have on that.

The Witness: It was a letter of suggestion, as I remember it.

Mr. Freeman: May I have a copy of it?

(Mr. Fidler hands document to the witness:)

The Witness: Yes.

Mr. Fidler: I hand to counsel for defendants the original of a letter dated December 6, 1940, and purporting to be signed by Mr. M. K. Hobbs and addressed to me, entitled The Larson-Zimmerman Interference.

The Witness: Is that the first time you heard from Mr. Hobbs?

Mr. Lindsey: I would like to ask opposing counsel if they have a copy of that letter that Mr. Fidler just identified?

Mr. Freeman: Yes, sir, we have.

Q. There had been, prior to December 6, 1940, the date of Mr. Hobbs' letter to Mr. Fidler, a conference as between Mr. Hobbs and Mr. Fidler with respect to the Interference?

The Witness: Prior to the date of that letter?

Mr. Freeman: Yes.

A. Well, I think I have since heard that there was.
990 That was during the period of Mr. Fidler's illness and I think that Mr. Hobbs either telephoned him there or called on him, but I am not sure.

Mr. Lindsey: Do you want a copy, you say?

Mr. Freeman: No.

Mr. Lindsey: I would like to ask the reporter to mark for identification the Hobbs letter of December 6, 1940, to Mr. Fidler, as Automotive's Exhibit 11.

(Said document was thereupon marked by the Notary as Automotive Exhibit Number 11 for identification.)

Mr. Freeman: Q. Did you get a copy of the letter dated December 6, 1940, from your attorneys? And I am referring to the letter that has just been offered by Mr. Lindsey as Automotive Exhibit Number 11.

A. I don't remember if I did or not. I doubt it.

Q. You were informed of the proposal contained in the letter of December 6, 1940?

A. Yes, sir.

Q. Do you know when the first agreement was submitted to Mr. Hobbs, looking forward to a settlement, and I am now referring to the more or less formal document as distinguished from a mere letter.

A. No, I do not. I don't even know who submitted it.
You mean one submitted by Mr. Hobbs or by Mr. Fid-
991 ler and Mr. Lindsey to Mr. Hobbs? I would not know how that originated.

Q. Mr. Hobbs never suggested that Larson turn over to Automotive his application covering a gauge, did he?

A. Not to my knowledge. I don't know what Mr. Hobbs suggested in their verbal conference.

Q. Were there some suggestions by Mr. Hobbs as a result of a verbal conference, over and above the proposal contained or outlined in the letter of Mr. Hobbs dated December 6, 1940?

A. I do not know. Those negotiations were carried on between the attorneys, and I don't know what the—

Q. Do you know where the suggestion came that Mr. Larson assign the application involved in Interference to Automotive?

A. It came in those conferences between the attorneys. I don't know who first made it.

Q. There was nothing in the letter of December 6, 1940 that Larson was to assign and convey title to his application to the plaintiff here, is that correct?

A. I don't see anything in this letter to that effect.

Q. Do you know who made the suggestion that Larson assign the application that was involved in Interference to Automotive?

A. Well, that came as a result of concession of pri-992 ority, didn't it?

Q. You understand, do you not, that had you gone on through with that Interference and you would have prevailed and had won the Interference, that that still would not have given you title to the Larson patent or to his application?

A. We would have gotten the claims involved.

Q. You got more than the claims that were involved, as a result of this settlement, did you not?

A. We got $500.00 and I think we got an additional application.

Q. Over and above the claims that were involved in the Interference, you got the Larson patent application covering subject matter which was not involved in the Interference, did you not?

A. Well, I would not be dead sure about that. What I would be sure of would be that Mr.—no. I think that is probably true. I think there were certain claims that were not involved in the Interference. I believe that is correct, now. I am not a patent attorney and I haven't thought of it in that way.

Q. And you do know that had the Interference gone on through and you would have prevailed, that is, that Zimmerman would have gotten the award of priority, you still would not have gotten title to the Larson application?

903 A. Well, as I said, I haven't thought of it that way, but that may be so.

Q. Whose suggestion was it that in the settlement agreement there be a provision that Larson and Precision would not question the validity or any of the Zimmerman patents issuing upon the two applications involved, did that come from Mr. Hobbs?

A. I do not imagine so. I imagine that that was one of our demands.

Q. And likewise, you made a similar demand upon Snap-On?

A. Certainly, I imagine so. That is my recollection. I did not personally make the demand.

Q. What were you giving Larson in return for his assigning the patent application involved in Interference to Automotive?

Mr. Lindsey: May the witness examine the contract?

Mr. Freeman: Yes.

Mr. Lindsey: I think that is the best evidence. It speaks for itself.

Mr. Freeman: I have a photostatic copy of it and it will be a little easier for him to read. Are you getting your original?

Mr. Fidler: I thought you did not want them.

(Mr. Fidler hands documents to the witness.)

904 The Witness: You mean what we gave to Larson and Precision or to Snap-On?

Mr. Freeman: Q. First, go ahead and tell us what you gave to Precision and Larson, and then afterwards tell us what you gave to Snap-On.

A. Well, first of all, it seems to me that we provided for the termination of the Interference.

Mr. Lindsey: On further consideration, I am going to instruct the witness that he is not required to answer that question without an order from the Court. The contract speaks for itself and the witness is not a lawyer, he is not a patent attorney, he is not in position to interpret a contract, and that is one of the issues for the Court to decide.

Mr. Freeman: So the record is clear, I did not ask you about the contract, did I? Mr. Lindsey is the one that sug-

gested that you look at the contract before you answered my previous question, that is correct, is it not, Mr. Wacker?

The Witness: Well, you asked me for an interpretation of what we gave to them under this contract.

Mr. Freeman: I asked you what you gave in return to Mr. Larson for the request that you made of him that he turn over to you the application involved in the Interference.

995 The Witness: Well, that is a part of this agreement.

Mr. Freeman: And Mr. Lindsey is the gentleman that handed you the agreement and asked you to look at it before you answered my question, is that correct?

The Witness: That is right.

Mr. Lindsey: The contract speaks for itself, and I will again advise the witness that he is not required to answer Mr. Freeman's first question without an order of the Court.

Mr. Freeman: Q. Tell me now, Mr. Wacker, what you understood, then, aside from the contract that you were giving to Mr. Larson in return for the request that he convey to you the Larson Application involved in Interference, aside from what is stated in the agreement.

Mr. Lindsey: I will again instruct the witness that he is not required to answer that question without an order of the Court.

Mr. Freeman: Q. What was your understanding during the negotiations, prior to the execution of this contract, that you were giving to Mr. Larson and Precision in return for your request that he assign to you or to your company the Larson Application involved in Interference?

Mr. Lindsey: I again make the same observation.

Mr. Freeman: Q. You testified a minute or two ago that you were letting Larson out of the Interference, is that correct?

996 A. I said that we provided for the settlement of the Interference in this agreement.

Q. And didn't you say that you were letting him out of the Interference?

A. I don't think I used those words, no.

Q. You did say, then, that you were settling the Interference?

A. I said that this agreement provided for the settlement of the Interference. I believe those were the exact words I use.

Q. Was that a consideration in your mind that justified you in asking for an assignment of the Larson Application?

Mr. Lindsey: The same observation.

Mr. Freeman: And the same instructions not to answer, Mr. Lindsey?

Mr. Lindsey: Without an order of the Court. I can't instruct the witness not to answer.

Mr. Freeman: You are not answering, on advice of counsel, is that correct?

The Witness: That is correct, yes.

Mr. Freeman: Q. You were kept informed as to what was going on from time to time, during the period of the negotiations with Precision and Larson, by your attorneys?

A. That is right.

Q. And you O.K.'d any concessions or giving up 997 any points in your demands first made, before they were actually removed from the proposed agreements by your counsel?

A. I think before they made any concessions, they talked to me about it and secured my approval.

Q. So that you were kept pretty well informed as to what was being requested or asked for in your behalf?

A. Yes, I believe that is so.

Q. And any changes in the requests or lessening of the requests, you approved such lessening of the requests, did you not?

A. Well, I approved any changes in requests, because this original thing of Mr. Hobbs, that they were to pay us a royalty, was never gone through with at all, and the thing started all over. That collapsed and then they started all over, afresh from there, apparently, it wasn't merely just the same as if the same agreement was being adjusted as they went along, that wasn't the fact.

Q. The request or proposal as outlined in Mr. Hobbs' letter of December 6th was not acceptable to you?

A. No.

Q. And then I understand negotiations started over again, additional requests were made, it that correct?

A. No. I think that one of the things was that—my recollection is that, at a subsequent date, it developed as I testified earlier, that Precision was not in a position 998 to pay royalties.

Q. Do you recall the proposition outlined in a letter from Mr. Harry Alberts, dated December 16, 1940?

The Witness: On whose behalf?

Mr. Lindsey: May he see the letter, Mr. Freeman?

Mr. Freeman: Yes. You have the original, Mr. Fidler.

Mr. Lindsey: Do you have it?

Mr. Freeman: Get the original and it will be easier for Mr. Wacker to read.

Mr. Fidler: Maybe it is here. I don't know. Dated what, the 16th?

Mr. Alberts: The 16th.

Mr. Freeman: The 16th.

Mr. Alberts: No. That is the 17th.

Mr. Lindsey: That is the 17th, Mr. Fidler.

Mr. Fidler: I produce the original of a letter dated December 17, 1940, from Mr. Harry C. Alberts to Davis, Lindsey, Smith & Shonts, attention of Mr. Raymond E. Fidler, Re: Precision Torque Wrenches—your submitted Settlement Agreement File 11580. (Mr. Fidler hands said document to Mr. Freeman.)

(Mr. Freeman handed said document to the witness.)

A. No. I never saw this letter.

Mr. Freeman: Q. Do you have a copy of the proposed agreement submitted by Messrs. Lindsey and Fidler to Precision and Snap-On at Mr. Hobbs' office on December 13, 1940?

Mr. Lindsey: We are getting it, now.

(Whereupon a short intermission followed.)

Mr. Freeman: This is off the record.

(Discussion off the record.)

Mr. Freeman: Will you read the question?

(Pending question read by the Notary.)

The Witness: A. Well, I don't think I have a copy, if that is the question.

Mr. Lindsey: We have, and are willing to produce, a copy of the draft of agreement referred to. Do you wish a copy of it, Mr. Freeman?

(Mr. Lindsey hands document to Mr. Freeman.)

Mr. Freeman: Q. Did you have a copy submitted to you of the agreement, that is proposed agreement that I now hand you which was furnished to me by your counsel Mr. Lindsey?

(Mr. Freeman hands document to the witness.)

A. I don't think I ever saw a copy of this. If I did, I don't remember it.

Mr. Freeman: We ask that the reporter mark for iden-

tification as Snap-On's Exhibit 14 the proposed agreement submitted on December 13, 1940.

(Said document was thereupon marked by the Notary as Snap-On Exhibit Number 14 for identification.)

Mr. Freeman: Q. Did you have anything to do with the request or the demand that Larson turn over to you, or that Snap-On turn over to you or your company, any of the moneys that had been accumulated and in Snap-On's possession, as a defense fund?

A. No. I am not familiar with any such request.

Q. You knew that there was such a request made at one time?

A. No, I don't think I did.

Q. You knew that there was a defense fund, that is, moneys belonging to Larson and retained by Snap-On?

A. I remember there was a provision for such a fund in the copy of the contract that I saw, that was originally drawn between Larson and Snap-On, but I wasn't familiar with their fund or whether there was any money in it or whether there wasn't. That had never come to my attention.

Q. Do you recall when you first saw the contract between Snap-On and Larson, that provided for a defense fund?

A. I imagine that was at the time of the Interference, about then, I would think when that was made available to us. I am not sure.

Q. Do you have a copy of another proposed agree-1001 ment submitted to Snap-On and likewise another agreement submitted to Precision and Larson on December 20, 1940?

Mr. Lindsey: Yes, we have, Mr. Freeman, in answer to your question directed to me, and we will be glad to produce them. I may say, I am not sure when it was submitted, but we recognize that you mean the two that we are handing you now.

(Mr. Fidler hands documents to Mr. Freeman.)

Mr. Freeman: We offer as Snap-On Exhibit 15 a copy of the proposed agreement as between Automotive and Snap-On, submitted on or about December 20, 1940.

(Said document was thereupon marked by the Notary as Snap-On Exhibit Number 15 for identification.)

Mr. Freeman: And as Snap-On Exhibit Number 16, a

copy of proposed agreement between Automotive and Precision and Larson, likewise submitted on or about December 20, 1940.

(Said document was thereupon marked by the Notary as Snap-On Exhibit Number 16 for identification.)

Mr. Freeman: Do you have a copy, Mr. Lindsey, of the first proposed assignment, covering the Larson Application, from Larson to Automotive?

I want the one that was proposed and included the 1002 right to improvements which was not executed.

Mr. Lindsey: Mr. Fidler informs me that we never prepared or submitted an assignment requiring the assignment of future inventions, Mr. Freeman.

Mr. Freeman: Of improvements?

Mr. Lindsey: No. I don't think we ever prepared that kind of an assignment, if you are referring to future improvements. If you are referring to what was disclosed in the Application, yes.— ;

Mr. Freeman: Improvements upon what was disclosed in the Application?

Mr. Fidler: No.

Mr. Lindsey: No. We never prepared such an assignment.

Mr. Freeman: Then, do I understand, Mr. Lindsey, that the only assignment that you prepared was the one that was actually signed by Larson and Precision Instrument Company?

Mr. Lindsey: No. We prepared another assignment, but if this is the assignment that you have in mind, I have no objection to your examining it, but there is nothing about improvements upon the inventions disclosed in the Application. If you will show me the carbon, I will be glad to run down another copy, if we have it.

Mr. Alberts: I am going to my office, now, and look for it.

1003 Mr. Lindsey: We will be very glad to cooperate.

I may say that Mr. Fidler is continuing to look up such an assignment, to see if one exists. At least, there is not one that we have prepared, is that right?

Mr. Fidler: Here is the only one that I know of.

Mr. Lindsey: That is all right.

Mr. Alberts: I have a copy or two of assignments at my office I am going to get.

Mr. Lindsey: Here is one here, Mr. Alberts. You might look at it and see if that is the one.

Mr. Alberts: How about this? (Handing document to Mr. Freeman.)

Mr. Freeman: Q. Mr. Wacker, do you know whether Mr. Thomasma was paid for the time that he spent with your attorneys in preparing, in making out his affidavit of November 17, 1940?

A. No. He was not, to my knowledge.

Q. And that affidavit was made here in Mr. Fidler's office?

A. I do not know where the affidavit was made. I know it was made. Whether it was made in Mr. Fidler's home or in his office, I don't know.

Q. Do you know whether Mr. Thomasma was paid for his time on November 28, 1940?

A. Not to my knowledge.

1004 Q. Was he paid for any time that he spent in connection with the affidavit of November 17, 1940?

A. Not to my knowledge.

Q. You were instrumental, were you not, in getting Mr. Thomasma to part with 260 shares of stock of the Precision Instrument Company?

A. No, I wouldn't say that I was instrumental. I don't know what he parted with. I think that Mr. Hobbs suggested that we might be—that Mr. Fidler might be of assistance in getting some of that stock back for Precision. I believe, as I remember, he said it paved the way for concluding the arrangements on a basis satisfactory to them. I don't know what arrangements Mr. Fidler made on that.

Q. You do know that Mr. Fidler, representing Automotive, obtained the 260 shares of stock from Mr. Thomasma and turned the stock over to Mr. Hobbs?

A. I believe he obtained Mr. Thomasma's stock. I don't know how many shares it was. I don't remember.

Q. You do know that Thomasma had a stock interest in Precision?

A. Yes, sir.

Q. And in your report that you made of your meeting of November 3, 1940, you reported that Thomasma's stock had some value, did you not?

1005 A. I do not remember that. In fact, I never investigated its value.

Q. Mr. Thomasma told you that if he testified in the

case; that that would destroy the value of the stock that he owned in Precision Instrument Company?

A. He undoubtedly made that statement. That is not anything that I said.

Q. Well, that is what you understood him to say to you, prior to the time that you made the report dated November 5, 1940, is that correct?

A. I must have understood that or I wouldn't have put it in the report.

Q. Do you know what was given to Mr. Thomasma for his stock in Precision, which your counsel turned over to Mr. Hobbs?

A. I am under the impression that he received $500.00 for that stock. That is my impression.

Q. From whom?

A. Well, I think that we were paid $500.00 by Precision and I think we agreed to utilize that $500.00 for the purpose of acquiring Mr. Thomasma's stock and turning it back.

Q. Was that paid for by check of the Automotive Company?

A. That I would not remember.

1006 Q. Do you know whether or not it was paid for by check of Davis, Lindsey, Smith & Shonts?

A. I wouldn't remember that specifically.

Q. But you do recall, now, that $500.00 was paid for Thomasma's stock?

A. That is my recollection, yes, from what I was told.

Q. And who told you?

A. I believe Mr. Fidler told me.

Q. Do you have any letters or correspondence, or other documents, with respect to the stock purchase by your company or your attorneys, from Mr. Thomasma?

A. I don't think so. I do not remember any.

Q. Did you get any receipt from Mr. Thomasma for the $500.00, other than a stock certificate itself?

A. Not that I am aware of. I imagine the cancelled check would have been its own receipt.

Mr. Freeman: I wonder if I might ask Mr. Fidler whether or not it was a Davis, Lindsey, Smith & Shonts check, or was it a check on the part of Automotive?

Mr. Fidler: My recollection is that it was our firm check that was given to Thomasma.

Mr. Freeman: And is it likewise your recollection, Mr. Fidler, that the amount was $500.00?

Mr. Fidler: That is correct.

1007 Mr. Freeman: Q. Did your company give to Mr. Thomasma any release of any kind with respect to the stock transaction or as a part of the stock transaction, at the time you paid or your attorneys paid Mr. Thomasma $500.00?

A. Not that I remember.

Q. Did you have any correspondence with your firm of attorneys to the effect at all that they had purchased Thomasma's stock for $500.00?

A. I believe that was taken up either in conference or over the telephone; I don't recall any records of it. If they exist, they are probably here now.

Q. And did you give your O.K. to the purchase of Thomasma's stock for the sum of $500.00?

A. Yes.

Q. And you purchased that stock prior to any actual settlement of the Interference or the conclusion of the agreements that are now here involved?

A. I would not know about that. As I remember it, that was Mr. Hobbs' suggestion and one of the essentials to get the thing cleaned up, that they wanted Thomasma out of the picture.

Q. Do you recall whether or not your company was invoiced for a disbursement of the $500.00 paid by Davis, Lindsey, Smith & Shonts to Mr. Thomasma?

1008 A. We probably were invoiced. I mean I am certain if Davis, Lindsey, Smith & Shonts spent $500.00 in our behalf, that we got a bill for it.

Q. And they didn't use the $500.00 that was paid by Precision and Larson in making that purchase, did they?

A. I do not fully understand that question. I mean it was $500.00 and whether it was the—

Q. Was that the reason that you wanted $500.00 to be paid by Larson to your company?

A. No.

Q. What was the reason for the demand of $500.00?

A. Well, we were told originally that that was all they were in a position to pay, in lieu of the royalties that were originally demanded.

(Whereupon a short recess was taken.)

Mr. Freeman: Mr. Fidler, do you have the correspond-

ence as between your firm and the plaintiff here, having to do with this Interference, as we requested?

Mr. Fidler: Yes.

Mr. Freeman: I wonder if we could have that, so that Mr. Ooms might look at it now and perhaps save a little time, as well as any correspondence or memorandums or inter-office communications carried on, in connection with this Interference, at the plant or offices of the plain-
1009 tiff here.

Mr. Fidler: I have correspondence between plaintiff and ourselves and correspondence from our files with the plaintiff, together with agreements and assignments and miscellaneous papers in the Interference. And do you want the correspondence of Mr. Thomasma?

Mr. Freeman: Yes. These papers that you are handing me are the papers that you have produced in response to my notice that I sent with my notice of taking testimony?

Mr. Fidler: That is right.

Mr. Freeman: That is, papers having to do with the Interference and negotiations of the Interference of Larson v. Zimmerman.

Mr. Fidler: That is right.

Mr. Freeman: Q. Mr. Wacker, do you know why no mention was made in the agreement of settlement as between your company and Larson or Precision, with respect to your purchase of Thomasma's stock for the sum of $500.00?

A. No, I don't know, excepting that that was going to be an accomplished fact at the time the papers were signed, as I understand it. I don't know of any other reason.

Q. And not part of any settlement of the Interference?

A. No. I think that was something that Mr.
1010 Hobbs insisted on, that they wanted to get rid of Thomasma, Precision did. We were anxious to get the thing settled and cleaned up. It was costing us lots of time and plenty of money.

Q. And you thought it was cheap to pay $500 and get rid of him, so that you could go on and make your settlement with Larson and Precision?

A. Well, we didn't have to get rid of Thomasma. It was their request that they wanted to get rid of Thomasma and suggestion that we might be more helpful in helping them do that than if they approached him direct.

Q. And you parted with your $500 to get rid of him?

A. I imagine that that is correct, yes, as far as I know it is correct—not to get rid of Thomasma, but to get the deal cleaned up, to enable them to get rid of him.

Q. Well, you paid $500 for his stock, to get his stock so that you could turn it over to Larson and Precision?

A. That is right.

Q. Did Mr. Fidler ever tell you that Larson lied in his testimony?

A. Well, he told me that he was very doubtful as to its veracity.

Q. That is putting it rather mildly, isn't it?

A. Well, I told you earlier that we definitely suspected it.

1011 Q. Did he ever tell you that Larson's testimony was a falsehood?

A. He told me that Thomasma had so stated.

Q. Did he ever tell you that Larson was guilty of perjury?

A. No.

Q. The word perjury was never mentioned in any of your conferences with Mr. Fidler, with respect to Larson's testimony?

A. I probably mentioned it. I am sure I did. I don't know—

Q. You are not a lawyer, but you understand what perjury means, do you not?

A. Certainly, I understand it. Perjury, as I understand it, means testifying falsely.

Q. Under oath?

A. Under oath.

Q. Did Mr. Lindsey ever report to you about a telephone call that he had with Mr. Hobbs wherein he told Mr. Hobbs that this matter would have to be settled within 24 hours?

A. I don't remember. On what date was that telephone call?

Q. A day or two before settlement was made?

The Witness: What was the date of the settlement? I have forgotten offhand.

Mr. Freeman: December 20th, 1940 was the date of the settlement.

1012 A. I know that Mr. Lindsey was disturbed because he felt that certain things had been tentatively agreed to and then suddenly you would hear nothing more

from them, and I think he suggested that if these understandings were not gone through with, that we would then resume taking testimony in the Interference. That is my recollection.

Q. Didn't you tell Mr. Lindsey that the matter would have to be cleaned up within twenty-four hours?

A. Not that I ever remember of, no.

Q. Did Mr. Lindsey tell you about this telephonic conversation with Mr. Hobbs and what Mr. Hobbs told him, when Mr. Lindsey stated that the matter would have to be cleaned up with 24 hours?

A. No, I don't remember that.

Q. Do you know whether or not Mr. Hobbs hung up the telephone on Mr. Lindsey?

A. I don't know that.

Q. Do you know whether or not Mr. Lindsey then later called Mr. Hobbs and again talked to him, on that same day?

A. No. I understood that they had quite an argument, but I wasn't familiar with the details involved.

Q. Did Mr. Lindsey report to you that he called up Mr. Hobbs and invited him to have luncheon with him 1013 at the Union League Club?—

A. No.

Q. —on the following day?

A. No.

Q. Do you know whether or not Mr. Lindsey did have a meeting with Mr. Hobbs at the Union League Club, with respect to the settlement of this case?

A. I don't know where or when he met Mr. Hobbs, but I presume he must have met him, because the settlement grew out of the meetings of the attorneys.

Q. And the settlement grew out of the meeting of the attorneys following Mr. Lindsey's call to Mr. Hobbs giving Precision 24 hours to settle?

A. I told you I did not know anything about any 24 hour ultimatum. I had never heard of that.

Q. When were you informed that your attorneys were going to proceed to take the testimony of certain witnesses, particularly the wives of Carlsen and Larson?

A. Well, that was in December of 1940, after this thing —nothing happened apparently in relation to the settlement and then, as I understand it, Mr. Fidler and Mr. Lindsey came to the conclusion that we were more or less

being given the run around and that there was only one thing to do, and that was to continue taking testimony. They had suggested settling the case and apparently
1014 they weren't very anxious to do it and so there was only one thing for us to do and that was to go ahead and take the testimony of the rest of the witnesses.

Q. And that was after the meeting of November 28th, 1940?

A. Yes.

Q. You have talked about suspicion at great length during the taking of this testimony. I would like now to have you tell me when you first learned that Larson's testimony was false, and I use the word learned as distinguished from your word suspicion?

A. I think I first learned that Larson's testimony was false when they conceded priority, although I really definitely learned it when Mr. Larson admitted it from the stand a few weeks ago in Judge Igoe's court.

Q. You knew that Larson had admitted that he had perjured himself, prior to your executing the agreement with Precision Instrument Company on December 20, 1940, did you not?

A. No. I did not.

Q. You were just then operating on a mere suspicion?

A. That is correct. Nobody admitted to us that there was perjury there.

Q. And that suspicion cost you $50 for a handwriting expert and over $4700 for the investigators, is that correct?

1015 A. It certainly did. They had rigged up a case here which has subsequently been shown that was completely based upon perjury, and we would have been completely out of the picture and the indicator business if we hadn't taken some steps to defend ourselves.

Q. After you definitely learned that Larson had perjured himself and that Larson's witnesses had likewise perjured themselves, what did you do about it?

The Witness: After we had definitely learned?

Mr. Freeman: Yes. When I say you, I mean you and your company, Mr. Wacker.

The Witness: Yes.

A. Well, we in the meantime made a settlement with them. Remembering that situation where I think eight or nine witnesses of the opposition telling one story,

Against one man, who had been a disloyal employee of ours, telling another, now, we weren't in any position to go out and prove anything.

Q. You spent several thousand dollars for investigators prior to the time that Larson had even testified, did you not?

A. Well, we suspected, when these early dates were set up, that there was something funny going on somewhere, just in the light of our knowledge of the art. It was a funny time to come in with a patent application, any
1016 way, that many years after conception, right on the face of it.

Q. That was funny to you, was it not?

A. It was unusual, yes.

Q. And that same funny feeling existed in your mind when you signed the agreement on December 20, 1940 with Precision, is that correct?

A. You mean we were still suspicious; that is right.

Q. That same funny feeling?

A. That suspicious feeling. It is a little more accurate.

Q. When did you first see the torque wrench now sold by Snap-On, which you now charge to infringe the Zimmerman patents as well as the Larson patent?

A. I don't remember. I think we secured one. I believe our records would show that. Offhand I don't remember just when it was. I think we could develop that information from our records, however.

Q. In order to save time, I am wondering if you might have your records searched as to when you or your company first came into possession of information with respect to the torque wrench sold by Snap-On, and you give that information to your counsel there, Mr. Lindsey or Mr. Fidler?

A. We may have it now. I don't remember.

Q. And let them make a statement in the record.
1017 That will be sufficient as far as we are concerned.

A. All right.

Mr. Fidler: May I make the statement now?

Mr. Freeman: Go right ahead.

Mr. Fidler: I presume that you are referring to the torque wrench involved in this suit and to the internal mechanism of the wrench, the construction of it as a whole?

Mr. Freeman: I am referring to the wrench which you

charge to infringe the two Zimmerman patents and the Larson patent involved in this case now pending.

Mr. Fidler: About the middle of December, 1941.

Mr. Freeman: Mr. Fidler, are you talking about a physical device, or are you talking about any advertisement, or trade papers? If there is a difference in the dates, would you mind giving them to us?

Mr. Lindsey: I think Mr. Fidler tried to bring that out, Mr. Freeman.

Mr. Fidler: The first time that Automotive, or its counsel, were aware of the construction of the wrench, was about the middle of December, 1941. Prior to that time, advertisements had appeared indicating that there was a new wrench coming out; we heard of that sometime earlier, around about I believe October, 1941, but we were not able, by using every means that we could, by contacting Mr. Alberts and trying to buy on the market 1918 wrenches, to determine the construction of the wrench until about the 15th of December, 1941.

Mr. Freeman: Q. Were you responsible, Mr. Wacker, for filing the Application for Reissue of Letters Patent No. 2,269,503?

The Witness: How do you mean, was I responsible?

Mr. Freeman: Q. Were you instrumental in bringing about the filing of application for reissue?

A. Well, our attorneys did it on behalf of the corporation and I acquiesced with that.

Q. Did you make any inquiry from your attorneys as to what was covered in the original Patent No. 2,269,503, after you knew what Snap-On was selling by way of a torque wrench?

A. No, I don't think so. I left those matters to them.

Q. You do know that the application for reissue was made after Snap-On's torque wrench was on the market and you had an opportunity to see it; is that correct?

A. I do not remember the exact date. That might be so. It might be. I would prefer a record of dates; then I might be able to answer that more specifically.

Mr. Freeman: Mr. Wacker, you are at liberty to refer to any dates or documents that you want to. All we 1919 are interested in is getting the facts.

Mr. Lindsey: I may say at this junction that I think this is outside of the subject for which discovery is sought.

The Witness: I have no—

Mr. Lindsey: Just a minute. And as to any privileged communication that passed between Mr. Wacker and his counsel, I object to their production, on the ground that they are privileged. My understanding was that this matter was going before the Court on May 10th on the question of the contracts and the perjury and the alleged compounding of perjury, and I think that your examination should be confined to that matter.

Mr. Freeman: If my memory is correct, Mr. Lindsey, I think the Snap-On has pleaded that Automotive is not in court with clean hands with respect to the Application for Reissue patent, because it first had an opportunity to see the torque wrench made for and sold by Snap-On and that thereafter the application for reissue was made.

Mr. Lindsey: That matter can be gone into later. That has nothing to do with the matter that comes up before the Court May 10th.

Mr. Freeman: With the understanding that we may again have an opportunity to examine Mr. Wacker, 1020 under the rules, in connection with any patent questions in this case, I will withdraw the question.

Mr. Lindsey: And with the further understanding that I am not waiving any right to make the same objection at that time, if I see fit.

Mr. Freeman: Q. Mr. Wacker, you used Mr. Thomasma to get information for you with respect to Precision Instrument Company; did you not?

A. I imagine Mr. Fidler asked him some questions.

Q. Did you ever ask him to get any information for you about Precision Instrument Company?

A. Not specifically. If he was asked, I think Mr. Fidler asked him.

Q. The stock was purchased by you, that is, Thomasma's stock in Precision Instrument was purchased by you in December of 1940?

A. That is as I remember it.

Q. And of course, you knew then that Mr. Thomasma had no more connection with Precision Instrument Company, that is correct, is it not?

A. I think he told us that he had been forced out and his only connection was that of a stockholder.

Q. Well, you know that he had sold all of his stock as early as December, 1940, did you not?

1021 A. Well, he sold his stock in connection with this settlement. Is that what you mean?

Q. What did you have in mind when you wrote Mr. Thomasma on June 25th, 1941 asking him to get you information about Precision, and I am handing you a letter which you have given me, dated June 25, 1941?

A. Oh yes, they agreed to discontinue the production of the type of wrench that was involved in the Interference after they had completed orders up to about 6,000 wrenches, and we began to wonder if they were living up to that agreement or not, whether they were still continuing to make wrenches beyond the amount of the 6,000, and I asked Mr. Thomasma if he had any way of checking that up for us.

Q. Do you think that that was a reasonable thing to do, when you knew of the existing controversy between Mr. Thomasma and Precision Instrument Company, to ask him to get you information?

(Mr. Alberts returned to the hearing room at this point in the proceedings.)

Mr. Lindsey: What existing controversy? On that date?

Mr. Freeman: The existing controversy—or rather, the controversy that existed shortly prior to your purchase of Thomasma's stock from Precision Instrument 1022 Company and at the time that you turned it over to Mr. Hobbs?

Mr. Lindsey: May I ask the date of that letter?

Mr. Freeman: June 25th, 1941.

Mr. Lindsey: You can call that shortly before, if you want to, but I don't. That is like the day before Christmas being December 23rd.

Mr. Freeman: Q. The purpose of asking Thomasma to get information on June 25th, 1941, was to get from Thomasma information as to what Precision was doing, is that correct?

A. That is right.

Q. And you then had a contract with Precision, did you not?

A. That is right.

Q. And you had a right to get a statement from Precision, did you not?

A. That is right. I believe that Mr. Fidler had written for such statement, of which I am not certain.

Q. And did you get such a statement from Precision?

A. I think we did at some previous date.

Q. And you were using Mr. Thomasma to check up?

A. That is correct.

Q. And did Mr. Thomasma get the information that you requested in your June 25th letter?

A. I don't think he was able to get it. We thought 1023 he might be able to determine it from some serial numbers or something of the kind, but I don't think he was able to get it.

Q. You wanted to get that information indirectly?

A. Yes, I wanted to check up. There was nothing that Precision had done in the past that inspired me with any confidence in them.

Q. And had Thomasma done anything that inspired you with confidence?

A. Not any particular thing, no.

Q. As a matter of fact, you had the same confidence in what Mr. Thomasma told you as you had in Precision Instrument Company, is that not so?

A. Well, to a varying degree, possibly, but there was a certain amount of lack of confidence there.

Q. You had lack of confidence in Mr. Thomasma's affidavit, did you not?

A. That is right.

Q. And yet, on June 25th, 1941, you were asking him to secure some confidential information for you?

A. That is right.

Q. And you were willing to rely on that confidential information?

Mr. Lindsey: I object to that question. He wasn't asked for any confidential information. He was try-
1024 ing to find out what the wrench was.

The Witness: Trying to find out how many were shipped.

Mr. Lindsey: Or whether they had finished the order. If that is confidential, I would like to know what is confidential.

Mr. Freeman: Q. When, after June 25, 1941, did you first see Mr. Thomasma?

The Witness: After June 25th?

Mr. Freeman: Yes.

A. I wouldn't remember when.

Q. Do you recall—

A. He came to my house one evening, I remember that, and called on me.

Q. In the summer of 1941?

A. I don't remember when it was. I would have to check that up.

Q. Do you recall whether or not it was after the letter of June 25, 1941?

A. I do not think it had anything to do with that letter. I don't know just when it was.

Q. Do you recall Mr. Thomasma asking that he see you some evening or week-end?

A. No. I remember he wanted to come out and show me a product that he had been working on and thought we might be interested in it.

Q. Do you remember him answering your letter 1025 of June 25, 1941, suggesting an evening or a week-end meeting, because he could tell you more in person?—

A. No, I don't.

Q. —than he could by letter?

A. I don't remember that. No.

Q. I now hand you a letter dated July 21, 1941, and will ask you to state whether or not that is a letter received by you from George B. Thomasma? (Mr. Freeman hands document to the witness.)

A. That certainly appears to be a letter from him to me. I didn't remember the letter, but I don't deny the letter.

Q. And that letter is in answer to the letter of June 25, 1941 which you wrote to Mr. Thomasma? (Mr. Freeman hands document to the witness.)

A. It would appear to be, yes, sir.

Q. And the initials P.I.M.Co. on the Thomasma letter are the initials of Precision Instrument Manufacturing Company?

A. I would assume so, yes. I have no reason to doubt that they would indicate anything else.

Q. Now, did you have a conference with Mr. Thomasma in accordance with his request that he meet you some week-end or evening and discuss Precision Instrument Company?

1026 Mr. Lindsey: I am going to interpose an objection here. This has nothing to do with the subject that is coming before the Court on this trial on May 10th. It has nothing to do with the contracts. It has nothing to do with the perjury. I see no reason to pursue that subject. It simply takes time.

(Discussion off the record.)

Mr. Lindsey: I will insist on this objection, unless Mr. Freeman is willing to state that this line of examination has something to do with the question of the validity of those contracts and the question of perjury.

Mr. Freeman: That is correct, and further, I am trying to find out upon what Mr. Wacker based this so-called suspicion that he talked about all day today.

Mr. Smith: Now will you read the question?

(Pending question read by the Notary.)

A. I think sometime later, I don't remember when, I would have to check it up, I believe Mr. Thomasma stopped at my house one evening. I am quite sure that he was unable to secure any information in response to the question I asked in my letter.

Mr. Freeman: Q. That is, it is your understanding that Thomasma was unable to get any information?

A. That is correct.

1027 Q. Well, what was there, then, that Mr. Thomasma conveyed to you, which he said in his letter of July 1st, 1941, you better be told in person than by letter?

A. I haven't any idea.

Q. Your memory doesn't serve you in that connection?

A. No.

Mr. Freeman: We offer in evidence as Snap-On Exhibit 17 a carbon copy of a letter dated June 25, 1941, from Automotive Maintenance Machinery Co. to George B. Thomasma, and a photostatic copy of the reply by George B. Thomasma to Mr. Fred Wacker, dated July 1st, 1941, as Snap-On Exhibit 18.

(Said documents were thereupon marked by the Notary as Snap-On Exhibits 17 and 18, respectively, for identification.)

Mr. Lindsey: I would like to ask Mr. Alberts if he found that assignment that Mr. Freeman referred to as having provided for the assignment of the improvements on the invention shown in the Larson agreement, and which Mr. Alberts stated he was going back to the office and try and find it? Have you found that assignment, Mr. Alberts?

Mr. Alberts: I found a copy of the assignment you had before you here before I left, plus a copy of the 1028 assignment of Snap-On to Precision that was executed by Snap-On. That is all I found.

Mr. Lindsey: Did you find an assignment which provided for the assignment of improvements upon the invention shown in the Larson Application?

Mr. Alberts: No, I just found the assignment submitted by Mr. Fidler to me as the form he would require Larson to sign, and that merely called for "the entire right, title and interest in and to the inventions and improvements in Torque Wrenches described and claimed in said Larson Application, Serial No. 232,723", and so forth.

(Whereupon an intermission followed while Mr. Ooms and Mr. Freeman examined papers.)

Mr. Freeman: I am going to ask the reporter to mark a letter dated December 27, 1940, of Automotive Maintenance Machinery Co. to Davis, Lindsey, Smith & Shonts, Attention: Mr. R. E. Fidler, as Snap-On Exhibit 19.

(Said document, consisting of 2 pages, was thereupon marked by the Notary as Snap-On Exhibit 19, for identification.)

Mr. Freeman: Mr. Fidler, will these papers be available to us tomorrow as well, even though Mr. Wacker 1029 is not on the stand?

Mr. Fidler: Yes.

Mr. Freeman: That is, all the papers that you have produced?

Mr. Fidler: Yes, all that I have produced will be preserved in those envelopes.

Mr. Freeman: Here at your office, should we want them, is that right?

Mr. Fidler: Yes.

Mr. Freeman: That is all from Mr. Wacker.

Mr. Ooms: That is all for Larson and Precision, also.

Mr. Lindsey: May the record show that counsel for defendants have gone through a file of correspondence produced by Mr. Fidler, the file being in the neighborhood of an inch in thickness, and that from the file came Snap-On Exhibit 19 for identification.

Mr. Fidler: They were envelopes.

Mr. Ooms: 7 other envelopes or six envelopes.

Mr. Lindsey: Six or seven envelopes; and they have examined, rather, about six other envelopes of different documents, also correspondence and other matters.

Mr. Ooms: Let the record show that the examination was made in 1 2 or three-quarters of an hour, and that 1030 the defendants have been assured by counsel for the plaintiff that the files will remain available throughout the adverse depositions.

Mr. Freeman: The same stipulation with regard to

exhibits offered in behalf of Automotive shall likewise apply to the exhibits offered in half of Snap-On and Precision.

Mr. Fidler: Yes.

Signature of Witness.

1031 (During the reading of said deposition, at Page 28, the following occurred:)

Mr. Ooms: I would like to read that exhibit now. We have introduced it as Defendant's Exhibit 11 and we now so offer it.

(Said document was thereupon received in evidence by the court; was marked as DEFENDANTS' EXHIBIT No. 11, and was read to the court by Mr. Ooms.)

1032 (Thereupon Mr. Ooms resumed the reading of said deposition. During the reading of said deposition, at Page 44, the following occurred:)

Mr. Ooms: I would like at this time to offer in evidence as Defendants' Exhibit 12 the yellow memorandum of the handwriting expert produced at that time.

(Said document was thereupon received in evidence by the court and marked as DEFENDANTS' EXHIBIT No. 12.)

(Thereupon Mr. Ooms resumed the reading of said deposition. During the reading of said deposition, at Page 45, the following occurred:)

Mr. Ooms: They were produced here and offered in evidence a day or so ago when Mr. Wise was on the stand. They were the reports Mr. Fidler said he had made from the oral reports given him by the investigator.

(Thereupon Mr. Ooms resumed the reading of said deposition.)

1033 (Thereupon, at page 65 on the reading of said deposition, the following occurred:)

Mr. Ooms: May I have five minutes, your Honor?

The Court: Yes; take a five minute recess.

(A short recess was taken.)

(Thereupon counsel resumed the reading of said deposition, and at page 74 the following occurred:)

Mr. Ooms: "Mr. Lindsey: I would like to ask the reporter to mark for identification the Hobbs letter of December 6, 1940, to Mr. Fidler, as Automotive's Exhibit 11."

That has gone in under another number. It has been read.

(Thereupon counsel resumed the reading of said deposition, and at page 113 thereof, the following occurred:)

1034 I would like now to offer in evidence Defendants' Exhibit 19, the letter I have referred to, dated December 27, 1940, on the letterhead of Automotive Maintenance Machinery Co., addressed to Davis, Lindsey, Smith & Shonts, re Larson vs. Zimmerman Interference No. 77565.

(Said document so offered and received in evidence was marked DEFENDANTS' EXHIBIT 19, and was read to the Court by Mr. Ooms.)

(Thereupon counsel resumed the reading of said deposition, and at the conclusion of page 117 thereof, the following occurred:)

Mr. Ooms: I am now offering the deposition as Defendants' Exhibit 78.

(Said deposition, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT No. 78.)

Mr. Lindsey: We would appreciate the right to call Mr. Wacker to the stand at this moment, and cross-examine him in connection with the matters contained in this deposition; the reason being, as we have stated before, he has been laid up; it might be there would be some difficulty in getting him down next week.

The Court: We can go ahead with Mr. Wacker.

1035 FRED G. WACKER, called as a witness by the plaintiff for cross-examination, having been first duly sworn, was examined and testified as follows:

Cross-Examination by Mr. Fidler.

Q. You are the Fred G. Wacker who gave a pretrial deposition in this case, and whose deposition was read a few moments ago by Mr. Ooms; is that correct?

A. I am.

Q. In that deposition there was reference to a meeting held in my office on November 28, 1940, at which time there was present Mr. Alberts, Mr. Johnson, yourself, Mr. Allen and I; were you present throughout that meeting?

A. Yes, sir.

Q. Now, Mr. Wacker, I hand you a letter dated June 30, 1941, and ask you whether or not that is a letter written by you.

A. Yes, sir.

Mr. Fidler: Your Honor, I am not going to read this letter; but there is one question that I would like to ask the witness about.

Mr. Ooms: May we have a copy of it?

Mr. Fidler: It is a letter I have shown opposing 1036 counsel. I wish to offer the letter in evidence at this time as Plaintiff's Exhibit 26.

(Said letter of June 30, 1941, so offered and received in evidence was marked PLAINTIFF'S EXHIBIT No. 26.)

Mr. Fidler: Q. Mr. Wacker, this letter in the second paragraph thereof refers to "Clean-handed Joe Johnson;" what was the basis of that statement?

The Witness: A. Well, when Mr. Johnson came into the meeting November 28th, his opening remark was to remind us that he was entering the meeting with clean hands; and he referred several times during the meeting to the fact that he had come with clean hands. With the result that our vice-president Mr. Allen and I jokingly nicknamed him clean-handed Joe from then on. And I guess I possibly referred to him in that way in this letter.

Q. Mr. Joe Johnson, who has testified further here in this case, testified as follows, on pages 356 and 357 of the record:

"And after you went into Mr. Fidler's office, what was said?

"A. Mr. Alberts introduced me; it was the first time that I had met Mr. Fidler; and he made the statement at that time that we were there solely in behalf of 1037 Snap-On Tools Corporation. To which Mr. Fidler replied that so far as he was concerned Snap-On was Precision, and Precision was Snap-On."

Is that testimony true?

A. No, sir.

Q. Mr. Johnson further testified, in answer to the question, "Did Mr. Alberts say anything about what he was going to do in connection with the Interference?

"A. Oh, yes; he did state to Mr. Fidler that in view of the information that we have learned, that we would immediately get in touch with Mr. Larson; and that if the facts were substantiated by Mr. Larson, that he would

grant a concession of priority, or whatever it happened to be; in the Interference proceeding; and also that he would withdraw as attorney for Larson."

Is that testimony true?

A. Only partially. He did not say anything about granting priority. He said that if Mr. Thomasma's testimony proved to be true, that he would witdraw as counsel for Precision.

Q. That testimony I just read was at page 360 of the record. And also on that same page, Mr. Johnson was asked, "Did Mr. Fidler make any statement to you
1038 or Mr. Alberts, or to both of you, as you were leaving?"

"A. Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker; that Mr. Wacker had spent considerable money on tension wrench patents, and that unless a satisfactory adjustment was made with him, that he would unleash the dogs."

Is that testimony true?

A. No, sir.

Q. Again, on page 361 of the record, Mr. Johnson testified, in answer to the question, "Mr. Fidler told you that?"

"A. Yes, sir; he made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States patent officials, and that it was even a matter for the United States District Atorney."

Is that testimony true?

A. No, sir.

Q. Now, Mr. Harry C. Alberts has also testified in this case; did you meet Mr. Alberts?

A. I met him twice in your office; on November 28, 1940 was the first time.

1039 Q. Now, Mr. Alberts in testifying in this case, on page 430 of the record, testified, "And Mr. Fidler made a statement to me that he was proceeding on the basis that Snap-On was Precision and Precision was Snap-On, and only under those conditions or under that understanding would he give us the information directly from Mr. Thomasma;" is that testimony true?

A. No, sir.

Q. Mr. Alberts further testified on page 430 and 431 of the record, in response to the question, "And then what happened?"

"A. Well, Mr. Fidler was quite shocked that I took

that position as abruptly as I had taken it. And he said, 'Well, Snap-On's hands are not too clean in this matter either.' And then Mr. Johnson replied by saying that Snap-On's hand were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane. And for a moment nothing was said by anybody. Finally Mr. Fidler said to Mr. Wacker, 'What shall we do about it?'

Or, 'What do you think we should do?' Mr. Wacker
1040 replied and said, 'Well, it is up to you.' And Mr.
Fidler said, 'Well, you are here now. I told you I would get you the information first hand. I have Mr. Thomasma here. We might as well go ahead with the conference.' And we then proceeded. He called in Mr. Thomasma."

Is that testimony true?

A. No.

Q. Mr. Alberts further testified, on page 431 and 432 of the record that, "He was introduced to Mr. Johnson, and he was introduced to me."—Referring to Mr. George B. Thomasma.

A. That who was introduced to whom?

Q. I will restate: Mr. Alberts was asked the question, "That is George B. Thomasma?" And Mr. Alberts answered, "George B. Thomasma. He was introduced to Mr. Johnson, and he was introduced to me. We shook hands, that was the first time I had seen him. Mr. Johnson remarked to me after we sat down that that is the first time he had seen him. Mr. Fidler asked me if I wanted to ask the question, and I said, 'Well, you go ahead; you are more familiar with what you want to produce than I am.

You ask him the questions, and if I have anything to
1041 add I will ask permission later on to direct some
questions to him.'" Is that testimony true?

A. Well, I remember it was agreed that you were to ask the questions; and when you got through asking the questions you asked Mr. Alberts did he have any questions that he would like to ask. That is as I remember that.

Q. On page 433 of the record Mr. Alberts further testified, "When Mr. Fidler said that he was through, and asked me if I had any questions, I said I had a few questions; and he said go ahead. So I examined Thomasma on what he had know about Snap-On Tools Corporation, and about myself; if he was the inventor of this, why didn't he

come in to see me. He replied by saying that Larson and Carlsen refused to allow him to come and see me; that he wanted to come and see me, but they absolutely prohibited him from coming to see me. I asked him if he had gone to Snap-On Tools Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked if he had met Mr. Joe Johnson then; he said no. I asked him if he had met me before, and he said no, he did not. I asked him why he did not come to see me, if he was the inventor he should have told me about this invention, 1042 and I could then have prepared the Application in his name, if he was the inventor; that was the proper way of doing. He said that Larson and Carlsen insisted if I knew that an ex-employee of Precision was connected with Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision."

Is that testimony true?

A. Nothing of that kind was said at that meeting.

Q. Mr. Alberts further testified, on pages 434 and 435 of the record: "Well, we got our coats and hats; we stood up and were about to leave, when I made the statement to Mr. Fidler that under all of the circumstances that were presented to me at that meeting, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; that they would use their influence on Larson to see that that was done; that I saw no other way out of it."

Is that testimony true?

A. No; there was no mention made of concession 1043 of priority at all.

Q. Mr. Alberts further testified on page 436 of the record: "A. I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority; and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do."

Is that testimony true?

A. No, sir.

Q. Again, on page 437 of the record, Mr. Alberts testi-

fied—and you understand, this testimony was directed to the conference at my office on November 28, 1940.

A. That is right.

Q. Mr. Alberts testified, at page 437 of the record: "A. Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over $5,000 investigating Larson and his associates; that a concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and settled promptly, or else Mr. Wacker would instruct him to unleash the dogs. And he continued by saying that he had already talked to the Patent Office official and that if Mr. Wacker was 1044 compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense, thae he certainly would have to go to the District Attorney with this matter."

Is that testimony true?

A. Certainly not.

Q. Mr. Alberts further testified, on pages 437 and 438 of the record: "A. Mr. Zimmerman was then residing at Hartford. During the discussion they told us that Zimmerman no longer was with Automotive Maintenance Machinery Co., and that he was then living in Connecticut. And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman as an engineer; with which we were not of course interested."

Is that testimony true?

A. No, it is not.

Q. Mr. Alberts further testified, on page 438,—

A. May I correct my last statement. We may have mentioned that Mr. Zimmerman was in Hartford, but we never discussed his merits as an engineer.

Q. Now, on page 438 of the record, Mr. Alberts testified, in answer to the question, "And what happened after Mr. Fidler made the statement to you that concession 1045 would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?"

And he answered, "Well, I could say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation."

Is that testimony true?

A. I do not remember it.

Q. Who came to that meeting first, on November 28th?
A. In your office?
Q. Yes.
A. Allen and I came in first.
Q. And who left first?
A. Johnson and Alberts left first, unless possibly Thomasma went out first; I would not be sure on that.
Q. Now, up until the time that the agreements involved in this case were signed, were you aware that the testimony given by Larson, or any of it, or of any of his witnesses, the testimony given in this Interference was false or perjured testimony?
A. Well, I was suspicious of it, but we were not in any position to prove that it was false; we didn't know
1046 that it was false.
Q. When did you first become aware that such testimony was false or perjured testimony?
A. When Mr. Larson admitted it in this court room a few days ago.
Q. Did you at any time charge Larson or any of the witnesses testifying on his behalf, with the crime of perjury on account of the testimony given in the Interference?
A. Never.
Q. Did you at any time threaten to institute prosecution against Larson or any of his witnesses unless there was transferred to your company the Larson Application involved in the Interference and the sum of $500.00, and unless they executed the agreement that you entered into with them?
A. Not at any time.
Q. Did you at any time promise to withhold complaint against Larson, or any of his witnesses, and suppress evidence of his or their perjury if the Larson Application and the sum of $500.00 were transferred to you and the Automotive Precision and Larson agreement were executed?
A. No, sir.
Q. Did you at any time, before or after the exe-
1047 cution of the agreements between Automotive and Precision and Larson, and Automotive and Snap-On, suppress the evidence of Larson's perjury, or the perjury of his witnesses, and withhold making complaint to the proper officers of perjury known to you to have been committed by Larson or his witnesses?
A. No, sir.
Q. Did you at any time threaten Snap-On and its attor-

ney, who acted as attorney for Larson in the Interference, with the crime of possessing and concealing knowledge of the commission of perjury by Larson and others in his behalf?

A. No, sir.

Q. Did you at any time threaten Snap-On and its attorney, who acted as Larson's attorney in the Interference, with action for alleged civil and criminal conspiracy to defraud and damage Automotive by unwarrantedly delaying the issuance of its patents with perjured testimony and evidence fostered or intended to be fostered upon the Patent Office?

A. No, sir.

Q. Did you at any time, either prior to or after the Snap-On-Automotive agreement, threaten or continue
1048 to threaten Snap-On, its attorney, Larson, and others with prosecution?

A. No, sir.

Q. Did you at any time make any threats or repeat any threats of any kind against Snap-On, its attorney, Larson, and others, or repeat any threats to a point that Snap-On was coerced to cooperate with Larson and Precision and to subscribe to Automotive's terms that were tendered in the form of the agreements between Automotive and Snap-On and Automotive and Precision involved in this case?

A. Not at any time.

Q. Were the contracts, or either of them, entered into in consideration of Automotive's promise to suppress all causes of action against petitioner and the crime of perjury against Larson or any of his witnesses?

A. It was not even discussed.

Q. Did you at any time coerce Snap-On or its attorney or Larson, or did you place them under duress or did you make any persistent threats against them in respect to the crime of perjury or the suppression of the crime of perjury or evidence thereof?

A. I did not.

1049 Q. Did you through duress, coercion and the force of threats procure the execution of the agreements?

A. No, sir.

Q. Did you at any time do anything to compel the cancellation between Snap-On and Larson of the agreement of September 28, 1938?

A. No, I did not.

Mr. Fidler: That is all, your Honor.

Examination by Mr. Freeman.

Q. You knew that if Larson's testimony was true, that Larson should have prevailed in the Interference, and you would be out of business instead of Precision, at the time you made your settlement; did you not?

A. We suspected that, yes.

Q. You knew that if Larson's testimony was true, Larson should have prevailed?

A. If it had been true; and we suspected that it was not true.

Q. You suspected it was not true?

A. That is right.

Q. And you dealt merely upon suspicion?

1050 A. That is correct.

Mr. Lindsey: Dealt with whom?

Mr. Freeman: With Precision and Snap-On.

Q. And you used that suspicion in bringing about a settlement of this case; is that correct?—I am referring to the Interference case.

The Witness: A. Why, I don't think that we used any suspicion to settle the case.

Q. Well, what did you use?

A. I think we permitted Mr. Albert and Mr. Johnson to hear the story of Mr. Thomasma; and that resulted in the settlement.

Q. Did you ever make any claim against Snap-On or Precision for civil damages?

A. No, sir.

Q. I hand you a letter dated February 3, 1944, on your stationery, and appearing to have your signature thereon; that is a letter written by yourself, is it not?

A. It looks like it; yes, sir. Do you want me to read it?

Q. I will read it:

Mr. Fuller: Let us see the letter.

1051 Mr. Freeman: Yes; (Handing document to counsel.)—

Q. You were perfectly willing to spend money if you could keep Snap-On in line; is that correct?

A. I don't know what you mean by that question.

Q. Well, if you could keep Snap-On out of the torque wrench business, you were perfectly willing to spend your company's good money?

A. We were trying to protect our particular construc-

tion and type of torque wrench, which we felt we had originally developed.

Q. And you were willing to spend your money to keep Snap-On out of that kind of business; that is, the torque wrench business?

A. We were willing to spend money to protect our own patent rights against any one who might have attacked them.

Mr. Freeman: I offer in evidence the letter of February 3, 1941, as Defendants' Exhibit 60, on the letterhead of Automotive Maintenance Machinery Co., addressed to Davis, Lindsey, Smith & Shonts, Attention Mr. R. E. Fidler, in re Interference 77565, Autonotive-Snap-On settlement agreement.

(Said document so offered and received in evidence
1052 was marked DEFENDANTS' EXHIBIT No. 60.)

Mr. Freeman: And I now read Defendants' Exhibit 60, signed by Automotive Maintenance Machinery Co., by Fred G. Wacker:

(Counsel reading Defendants' Exhibit No. 60.)

Mr. Freeman: Q. Will you please explain just how you would be put on the spot if the government insisted on a particular size and type of wrench?

The Witness: A. Yes, sir; we are manufacturing exclusively today for the various armed services. In fact, everything we make goes to the armed services; and we did not want to get ourselves in the position with the armed services of opposing or taking an action which would prevent them from securing something that they needed for war purposes.

Q. Well, you knew that the wrenches that were being made by Precision and sold by Snap-On; that is, the amount of 6,000, was going to the government; did you not?

A. We understood that a large part of them were; yes, sir.

Q. And if the government insisted upon the same size, and so forth, where would that have put you on any spot; as long as the government was getting wrenches?

A. We would have either had to supply them our-
1053 selves, which we might not have been able to do, in addition to our other commitments, or would have been put in the position of opposing the demands of the government.

Q. Well, isn't it true that if Snap-On was able to fur-

nish the government wrenches, you would not have got that business?

A. Well, we have got plenty of it.

Q. Well, I am talking about the business back there around February, 1941.

A. We were competing for it; I don't know just what you mean by that.

Q. I am just trying to find out what you meant when you said, "And if that should happen it will certaintly put us on a spot."

A. Well, we did not want to be put in a position, with any of the services we were furnishing, of appearing to oppose procuring supplies. Our relations were too friendly.

Q. That is, with the government?

A. Yes, sir.

Q. And you did not want to oppose the government securing their wrenches—

A. That has got nothing to do with it.

1054 Q. I want to know where you would have been on the spot.

Mr. Fidler: I object; he has already testified twice.

Mr. Freeman: I think he can answer this one question; and I am through.

The Court: He takes pretty good care of himself.

The Witness: A. I have answered.

Mr. Freeman: Q. That is the best answer you want to make?

A. Yes, sir.

Mr. Freeman: That is all.

Mr. Fidler: That is all.

(Witness excused.)

1055 Mr. Ooms: What we on the defense will have to do before we rest is to read the Thomasma affidavit, Defendants' Exhibit 21, and then a few letters about which there is no dispute of any kind. They have been exchanged, and copies are in everybody's possession.

1056 I will try to go through these things as quickly as I can but I am sure I cannot go through them as quickly as I thought I could last Thursday, when we were talking about the time.

(Defendants' Exhibit No. 21 was thereupon read to the Court by Mr. Ooms.)

1057 Mr. Ooms: Pages 83 and 84 are in the form of a narrative statement, reading as follows:

(Counsel reading to conclusion.)

1058 Mr. Ooms: I would like at this time to offer on behalf of the Defendants, the following exhibits, many of which were marked and numbered during the tak-
1059 ing of the pre-trial depositions. Those markings will be retained. I expect to read only two of these. The others may be referred to in the examination of some of the witnesses.

As Defendants' Exhibit No. 28, a letter of April 1, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit No. 29, a letter from Mr. Thomasma to Mr. Wacker, of April 16, 1941.

As Defendants' Exhibit No. 44, a letter of April 21, 1941 from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 30, a letter of April 21, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit No. 31, a letter of June 4, 1941, from Mr. Wacker to George B. Thomasma.

As Defendants' Exhibit No. 45, a letter of June 20, 1941, from Mr. Fidler to Mr. Thomasma.

As Defendants' Exhibit No. 32, a letter of June 21, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 46, a letter of June 24, 1941, from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit No. 33, a letter of June 25, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 47, a letter of June 25, 1941, from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 17, a letter of June
1060 25, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 48, a letter of June 27, 1941, from Mr. Fidler to Mr. Thomasma.

As Defendants' Exhibit No. 49, a letter of June 30, 1941, from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit No. 18, a letter of July 1, 1941, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit No. 34, a letter of July 2, 1941, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 34-A, an enclosure of June 30, 1941, being a typewritten copy of a letter from Mr. Thomasma to Mr. Fidler.

As Defendants' Exhibit No. 35, a letter of July 8, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 36, a letter of July 28, 1941, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 50, a letter of Mr. Thomasma to Mr. Fidler, December 1, 1941.

As Defendants' Exhibit No. 37, a letter of March 25, 1942, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit No. 38, a letter of, Mr. Thomasma to Mr. Wacker, of April 1, 1942.

As Defendants' Exhibit No. 39, a letter of April
1061 22, 1942, from Mr. Thomasma to Mr. Wacker.

As Defendants' Exhibit No. 40, a letter of April 28, 1942, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 41, a letter of June 12, 1942, from Mr. Wacker to Mr. Thomasma.

As Defendants' Exhibit No. 43, a letter of October 10, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 52, the statement of the handwriting expert, Rudolph B. Salmon, to examination, comparison and opinion of drawings in re Zimmerman vs. Larson, dated December 27, 1940.

As Defendants' Exhibit No. 79, a letter from Mr. Fidler to Mr. Wacker, of October 13, 1939.

As Defendants' Exhibit No. 80, a letter of November 9, 1939, from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 81, a letter of November 13, 1939, from Mr. Fidler to Mr. Wacker; and as Defendants' Exhibit No. 81-A, a Dun and Bradstreet report on Precision Instrument Manufacturing Co., attached to that letter.

As Defendants' Exhibit No. 82, a letter of November 21, 1939, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 82-A, an abstract of
1062 the certificate of incorporation of Precision Instrument Manufacturing Co., attached to Exhibit 82.

As Defendants' Exhibit No. 83, a letter of November 24, 1939, from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 84, a letter of June 4, 1940 from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 85, a letter of July 22, 1940 from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 86, a letter of July 24, 1940 from Mr. Wacker to Mr. Fidler.

As Defendants' Exhibit No. 87, a letter of August 5, 1940, from Mr. Fidler to Mr. Wacker, and this is a letter I would like to read at this time.

(Defendants' Exhibit No. 87, was thereupon read to the Court by Mr. Ooms.)

Mr. Ooms: As Defendants' Exhibit No. 88, we offer the letter of August 16, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 89, the letter of September 20, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 90, the letter of October 19, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 91, the letter of November 4, 1940, from Mr. Fidler to Mr. Wacker.

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As Defendants' Exhibit No. 91-A, a statement signed by two of Automotive's employees, attached to the letter, Defendants' Exhibit No. 91.

As Defendants' Exhibit No. 92, a letter of November 23, 1940, from Mr. Fidler to Mr. Wacker, which I would like to read.

(Defendants' Exhibit No. 92 was thereupon read to the Court by Mr. Ooms.)

Mr. Ooms: As Defendants' Exhibit No. 93, a letter of November 23, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 94, a letter of December 21, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 95, a letter of December 26, 1940 from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 96, a letter of December 26, 1940, from Mr. Fidler to Mr. Wacker, which I would like to read.

(Defendants' Exhibit No. 96 was thereupon read to the Court by Mr. Ooms.)

Mr. Ooms: As Defendants' Exhibit No. 97, a letter of December 28, 1940, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 98, letter of January 24, 1941 from Mr. Fidler to Mr. Waeker.

1064

As Defendants' Exhibit No. 99, a letter of January 31, 1941, from Mr. Fidler to Mr. Wacker.

As Defendants' Exhibit No. 100, the letter of June 27, 1941, from Mr. Fidler to Mr. Wacker.

That is all the exhibits we have at this time.

The Court: If there are no objections they may be admitted.

Mr. Lindsey: No objection, your Honor.

(Which said documents were thereupon received in evidence by the Court and marked respectively as DEFENDANTS' EXHIBITS Nos. 28, 29, 44, 30, 31, 45, 32, 46, 33, 47, 17, 48, 49, 18, 34, 34-A, 35, 36, 50, 37, 38, 49, 40, 41, 43, 52, 79, 80, 81, 81-A, 82, 82-A, 83, 84, 85, 86, 87, 88, 89, 90, 91, 91-A, 92, 93, 94, 95, 96, 97, 98, 99 and 100.)

Mr. Ooms: I understand Mr. Lindsey wants to proceed with cross examination on a matter reserved with respect to Mr. Alberts.

Mr. Lindsey: In connection with the file I called for, may your Honor please.

1065 HARRY C. ALBERTS, resumed the stand and testified further as follows:

Cross Examination by Mr. Lindsey. (*Resumed.*)

Q. Mr. Alberts, previous to the conclusion of your cross examination, which was last Thursday, I think, I asked you to produce your application file, that is, your file on the application which matured into the Larson Patent No. 2,312,104, Plaintiff's Exhibit No. 24. The file was handed to me by Mr. Freeman, and there were some things that I couldn't find in it, and I called Mr. Freeman Saturday morning and told him in particular that I would like to obtain from you the photostatic copy of the drawing which you said you worked from when you prepared a roughed-out specification and also claims on December 26, 1940, and he said he would speak to you about that.

Now, do you have here in the court room that photostatic copy of the drawing that you re-sketched?

A. I do not have the re-sketched work sheets of drawing nor the work sheets of specification or claims. Those are not retained in the file. My stenographer disposes of all work sheets as soon as the Patent Application has been checked. That is the regular procedure in my office.

1066 And none of my files, except where they erred in not removing the work sheets, contain them. But I do have here my file copies or negative photostats of the drawings from which I worked, that is, the photostats from which I worked.

Q. These photostats which you hand me are from another application, is that correct?

A. They were for the Larson second Patent Application, yes.

Q. And, as I understood your testimony, you took photostats such as these that you handed to me, and sketched in the changes and variations from that wrench shown in those photostats in order to illustrate the wrench shown in the Larson Patent Exhibit No. 24, is that correct?

A. Well, substantially correct. I did have positive photostats in the file. At that time the client's copy of the specification and claims, and the photostats were not delivered to the client because I didn't know whether to deliver them to Snap-On or to Larson, so we retained those in the file. When we found those in the file, that is when I told Mr. Larson that from what I had already prepared and what I had in the files I could prepare a Patent Application for him, and I had before me a model which
1067 he then presented to me, and which I understand Mr. Ooms now has. From that model and the positives of these photostats I was able to make the variations upon which I put these numerals as I progressed in rewriting the specifications or claims from the draft that pertained to this Patent Application, and I instructed the draftsman to follow the figures on this drawing in making the drawings which resulted in part of the Patent Application that eventuated into Patent No. 2,312,104.

If you will compare the figures on the photostats with the figures on the drawing, they match figure for figure, with the exception of a few minor details in the last sheet, and this Patent Application from which I prepared the case had more in it than I wanted to put in this particular application, so a large part of the modification involved in it is the elimination of what already had been compared, rather than addition—however, there were inserts made too, to adapt what I had already prepared in connection with this Application to the specific structure of the Invention covered by Patent No. 2,312,104.

Mr. Freeman: "By "this Application" you are referring to the second Application?

1068 The Witness: The second Larson Patent Application, the one that was prepared and filed after the one that was assigned to Automotive.

Mr. Lindsey: You have no objection if I offer these photostats in evidence as Exhibits?

Mr. Freeman: Ask him whether it is a pending application. I have no objection.

Mr. Lindsey: He has produced it. I don't think it matters whether it is pending now or not.

I will offer the photostats in evidence as Plaintiff's Exhibit No. 51.

The Witness: I would like to have them make positives from those negatives and return those to my file.

Mr. Lindsey: We have been doing that throughout the case.

The Court: It is understood they will do that in connection with these.

(Said documents were thereupon received in evidence by the Court and marked PLAINTIFF'S EXHIBIT No. 51, sheets 1 and 2.)

Mr. Lindsey: Q. Mr. Alberts, after you had made these resketched drawings on this photostat, did you keep it in your file or did Mr. Larson take it with him to Kenosha that day?

A. What is that, the drawing?

Q. Yes.

A. No, he just took the prepared specification and claims, and took the model from me, and I told him then that as far as I was concerned and as far as I knew, that he would have to conform the appearance of his new wrench to the exterior appearance of his old wrench, if he expected Snap-On to find an interest in it, even though the structure of the new wrench was satisfactory to them. So he thought he could do that, and he then took the description with him.

Q. Well then, when Mr. Larson executed the application for Patent No. 2,312,104, he had no drawings?

A. Not with him, no. He saw the drawings as I changed them, and o.k.'d the changes as I had them on the photostats.

Mr. Freeman: Mr. Lindsey, do you mean whether he had none of his patent office drawings?

Mr. Lindsey: Q. I mean he had no drawings with him to show the notary who took the oath, did he?

A. No, he didn't.

Q. Is it the custom in your office to prepare invention records with respect to each submitted invention such as Automotive's Exhibit No. 9, covering the Walraven invention?

A. That is prepared by the client. I had nothing to do with that. I set up these forms for Snap-On to follow, and I leave that to the engineering department. I have nothing to do with that.

Q. Was one prepared in connection with this Larson Application that we have been discussing?

A. It wasn't prepared in my office.

Q. You had but one stenographer in your employ dur-

ing the last half of December, 1940, did you not, Mr. Alberts?

A. That is right.

Q. Now I want to show you, from the file which you produced with respect to the Application maturing into the Larson Patent, Exhibit 24, fifteen pages of specification and seven pages of claims, not including the oath, and the formal papers: When was this specification and claims prepared?

A. Well, they were prepared as I went along; as I prepared the first sheets I would give them to her, and she would copy them, and then I would go on and prepare some more, and when she was ready for more she would
1071 come to me and take what I had done, and that is the way we worked.

Q. In other words, these particular papers or the originals of these particular typewritten pages that I have referred to were prepared on December 26, 1940, is that correct?

A. With this qualification, that when I read over the work the following time for correction, I made the corrections in a copy. I think that particular copy stayed in my office file. Then I gave the papers back to her to make the corrections on the original and whatever copies that she had, leaving it to her judgment to correct it on the sheets prepared on December 26, 1940, or to rewrite them if they needed rewriting. She used her own judgment about that.

Now, in order to give you a complete answer on that, I would have to see the file, a photostat of what is in the Patent Office. Now, from page 2, for instance, the crosses indicate where I caught an inclusion which I did not want in, and I wouldn't know whether she erased it on the original or rewrote the sheet. Apparently she just erased it on the original.

Going to, for instance, page 7, I see some erasures
1072 there, some changes in pen and ink. I wouldn't know what she did in that connection. She should have—if the corrections were sufficient to warrant recopying, she should have recopied them. If she could make the changes without defacing the paper or producing a sheet that was not too, I should say—well, I don't know.

The Court: Too sloppy, is that what you mean to say?

The Witness: Sloppy, that is right. She had the authority to change it on the typewriter on the original copy.

Now, I didn't follow this through. I have a rather active practice and I leave a lot of that to the stenographer.

Mr. Lindsey: Q. But the point that I was making was that the fifteen pages of specification and the seven pages of claims—sixteen pages—were all typewritten on December 26th, 1940, is that correct?

A. That is substantially correct. If there was an insert it wouldn't have amounted to much. I wouldn't say as to that.

Q. Now, you have referred to a model. Will you please produce that model of the wrench?

A. I don't have it.

Q. Is this the model which I hand you, Mr. Alberts?

A. That is the model. It looks a little more pol-
1073 ished now than it did then.

Mr. Lindsey: Have you any objection, Mr. Freeman, if I offer that in evidence?

Mr. Freeman: No.

Mr. Lindsey: I will offer the model in evidence as Plaintiff's Exhibit No. 52.

(Said article was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT NO. 52.)

Mr. Ooms: May the record show, Mr. Lindsey, that I have had it in my custody since, oh, about two weeks ago, and it hasn't been in Mr. Alberts' custody in the meantime, and that I produced it today?

Mr. Lindsey: No objection, of course.

The Court: Is that all of this witness?

Mr. Lindsey: That is all.

(Witness excused.)

The Court: All right, Mr. Alberts.

Mr. Freeman: Defendants rest.

Whereupon the Defendants Rested Their Case in Chief.

1074 Mr. Lindsey: I would like to make a demand on Defendants' counsel to produce all of the testimony and all the exhibits introduced during the taking of testimony in the Interference, except, of course, what has already been produced.

Mr. Ooms: No demand is necessary. We volunteer to produce that.

Mr. Lindsey: I will offer that a little later, Your Honor, after we straighten the matter out.

Mr. Freeman: May I return the file to Mr. Alberts?

Mr. Lindsey: Yes, indeed.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume I of the record, which together with Volume II thereof, constitute the printed record, printed under my supervision and filed on the seventeenth day of November, 1943, in:

Cause No. 8392.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larsen and Snap-On Tools Corp.,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, A. D. 1944.

(signed) Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON, AND SNAP-ON TOOLS CORPORATION, PETITIONERS,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 21, 1944.

CERTIORARI GRANTED OCTOBER 16, 1944.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No.

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8392

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Plaintiff-Appellant,

vs.

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON AND SNAP-ON TOOLS CORPORATION,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

THE DIETRICH WARDEN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

TRANSCRIPT OF RECORD FILED AUG. 30, 1943.

PRINTED RECORD



In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8392

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

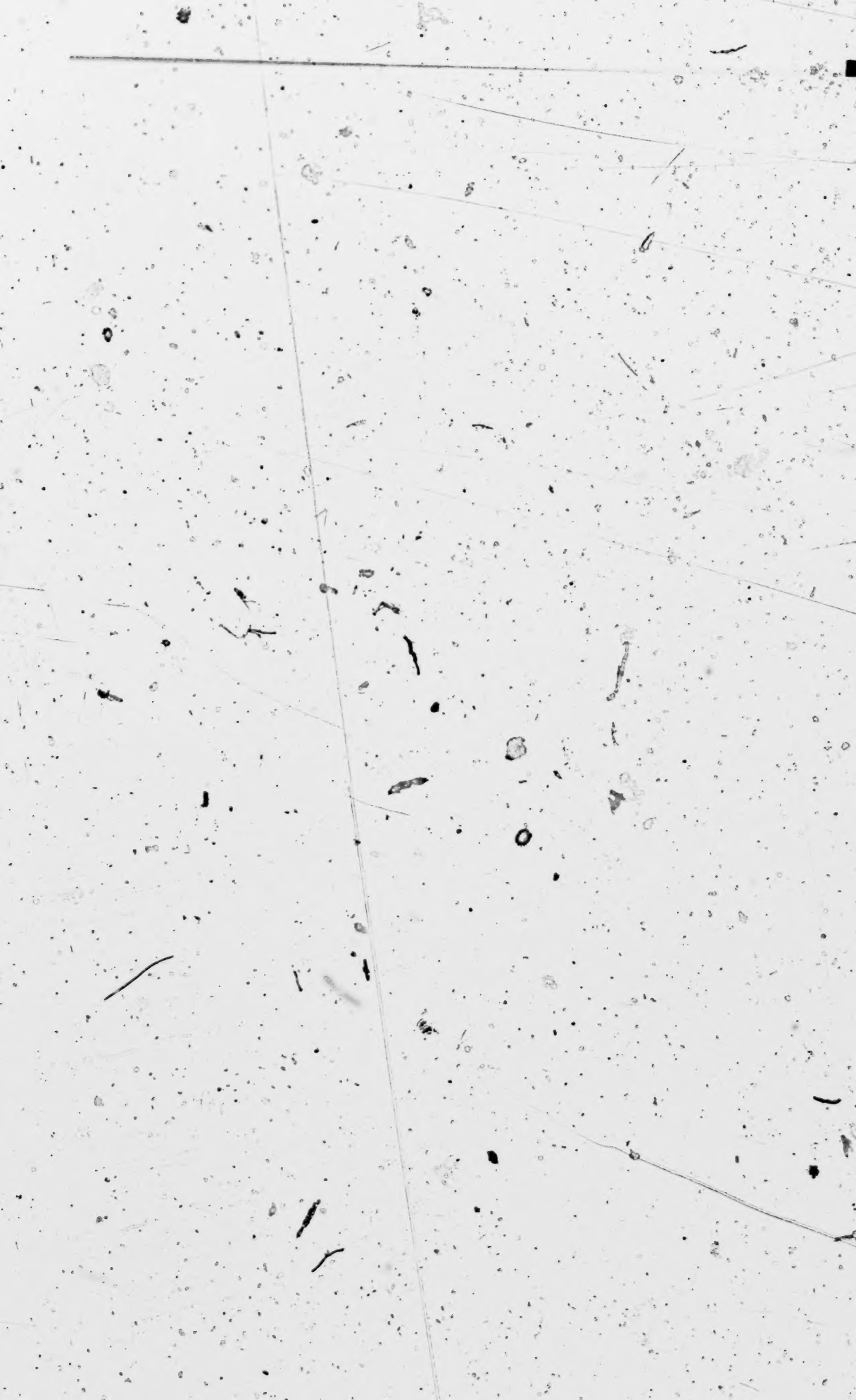
Plaintiff-Appellant,

vs.

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON AND SNAP-ON TOOLS CORPORATION,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.



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4	Letter, October 26, 1938, Snap-On to Larson	360	836
7	Letter, November 11, 1940, Snap-On to Precision	379	837
8	Letter, October 18, 1938, Alberts to Snap-On	379	838
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10	Letter, December 19, 1940, Alberts to Snap-On	379	840
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17	Johnson Deposition taken April 14, 1943	379	
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20	Letter, January 31, 1941, Alberts to Krichiver	468	859
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23	Letter, December 31, 1940, Fidler to Hobbs	482	866
24	Drawings of Larson Patent No. 2,312,104 of Feb. 23, 1943	491	867
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61	Letter, May 31, 1940, Fidler to Wacker	791	904
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27	June 27, 1942 receipt, Thomasma to Fidler	314	1020
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34-A	Letter, June 30, 1941, Thomasma to Fidler	567	1027
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36	Letter, July 28, 1941, Wacker to Thomasma	567	1028
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52	Salmon Invoice of Dec. 27, 1940	649	1040
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61	Larson-Snap-On Agreement of Sept. 28, 1938	221	1041
62	Letter, November 11, 1940, Alberts to Larson and Carlsen	250	1044
63	Letter, December 4, 1940, Hobbs to Precision	250	1045
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67	Letter, December 18, 1940, Hobbs to Larson	250	
68	Letter, December 19, 1940, Lindsey to Alberts	371	1048

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69 Letter, December 19, 1940, Alberts to Snap-On	426	
70 Alberts' Memorandum dated November 21, 1940	412	1050
71 Letter, December 3, 1940, Alberts to Fidler	415	1053
72 Alberts' Memorandum dated Dec. 11, 1940	419	1054
72-A Letter, December 12, 1940, re Defendants' Ex. 72, Alberts to Snap-On	419	1056
73 Letter, December 17, 1940, Alberts to Fidler	423	1057
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79 Letter, October 13, 1939, Fidler to Wacker	568	1069
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81 Letter, November 13, 1939, Fidler to Wacker	568	1072
81-A Dun & Bradstreet Report on Precision	568	1073
82 Letter, November 21, 1939, Fidler to Wacker	568	1076
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83	Letter, November 24, 1939, Wacker to Fidler	568	1079
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85	Letter, July 22, 1940, Fidler to Wacker	568	1082
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87	Letter, August 5, 1940, Fidler to Wacker	568	1084
88	Letter, August 16, 1940, Fidler to Wacker	569	1086
89	Letter, September 20, 1940, Fidler to Wacker	569	1087
90	Letter, October 19, 1940, Fidler to Wacker	569	1088
91	Letter, November 4, 1940, Fidler to Wacker	569	1089
91-A	Memo Letter, October 31, 1940, Strodtz and McFarland to Fidler	569	1090
92	Letter, November 23, 1940, Fidler to Wacker	569	1090
93	Letter, November 23, 1940, Fidler to Wacker	569	1091
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95	Letter, December 26, 1940, Fidler to Wacker	569	1094
96	Letter, December 26, 1940, Fidler to Wacker	569	1096
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98	Letter, January 24, 1941, Fidler to Wacker	569	1098
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100	Letter, June 27, 1941, Fidler to Wacker	569	1101

		Introduced in evidence at page	Reproduced at page
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103	Letter, November 19, 1940, Alberts to Raftery	737	1103
104	Wrench comprising Larson Exhibit 31 in Interference 77,565	828	
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No. 2,283,888—H. W. Zimmerman, May 19, 1942 1160

No. 22,219 (Reissue)—H. W. Zimmerman, November 3, 1942 1184

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Order allowing certiorari 1200

1075 Thereupon the Automotive Maintenance Machinery Co., to maintain the issues on its part, introduced the following evidence, to-wit:

1076 Mr. Lindsey: Mr. Hobbs.

May it please the court, I have about twenty letters which I wish to offer in evidence, and, in order to save time, I have prepared a list—I have furnished a copy of it to opposing counsel—and designated the particular numbers to be assigned to these exhibits and, unless your Honor has some objection, I suggest I hand the original exhibits, together with the list, to the reporter and consider these particular exhibits as having been offered in evidence. I think we can save a lot of time.

The Court: Very well.

Mr. Lindsey: There is no objection, is that correct, Mr. Freeman?

Mr. Freeman: That is correct.

1077 (Said documents were thereupon received in evidence by the court and marked, respectively, PLAINTIFF'S EXHIBITS NOS. 29, 30, 31, 32, 33, 34, 35, 50, 36 and 16, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49.)

MERVILLE K. HOBBS, called as a witness by Automotive Maintenance Machinery Co., being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Lindsey.

Q. Please give your full name, Mr. Hobbs.

A. Merville K. Hobbs.

Q. You are a member of the firm of Haight, Goldstein & Hobbs?

A. That is right.

Q. And you are the Mr. Hobbs in that firm-name, are you not?

A. Yes, sir.

Q. How long have you been practicing law, Mr. Hobbs?

A. Since 1923.

1078 Q. How long in Chicago?

A. Since 1923.

Q. How long have you been associated with Mr. George I. Haight in the practice of law?

A. Well, since 1923, which makes twenty years next month.

Q. And do you belong to any legal associations or societies?

A. Yes, sir. The American Bar Association; the Chicago Bar Association; the Illinois Bar Association; and the Patent Law Association, and I am chairman of one of the standing committees of the latter association.

Q. Now, you are somewhat familiar with some of the phases of this litigation, are you not, Mr. Hobbs?

A. Somewhat, yes, sir.

Q. When and where did you first meet Kenneth R. Larson and Walter Carlsen?

A. In my office in The Rookery Building and a reference to my time sheets indicates that the day was the 29th of November, 1940.

Q. Have you your time sheets with you and are opposing counsel at any time free to refer to them if they wish?

A. Oh, yes.

1079 Q. Did you know they were coming to your office or did they just drop in casually?

A. No, I knew they were coming to my office.

Q. How did you know they were coming to your office?

A. On the same day and, in fact, just shortly before they came, I had a telephone call from Mr. Alberts.

Q. Does your time sheets show that telephone call from Mr. Alberts?

A. Yes.

Q. Would you mind reading that, Mr. Hobbs?

A. Well, the time sheet is headed with my name. That indicates it is mine as compared to others in the firm. It is dated November 29, 1940. Under the heading, "Engaged" I read this:

"Precision Instrument Manufacturing Company, 1846 Minor Street, Des Plaines, Illinois."

The fact that the address is there indicates that this was the first time I had contact with the people because I was getting their name and address. Then it goes on:

"Phone conference with Mr. Alberts. Personal conference with Messrs. Larson and Carlsen."

1080 Q. What did Mr. Alberts say when he telephoned you?

A. Mr. Alberts told me there was an interference pend-

jing, which he identified by name. He told me the parties whose applications were involved, namely, Larson and Zimmerman. He told me who the assignees of the respective applicants were. He told me the attorneys involved and he told me that the day before he had been at Mr. Fidler's office together with his client, Mr. Johnson of Snap-On, that there had been revealed to them the Thomasma affidavit.

When I say "revealed to them," I don't mean to indicate they read it or read it all or whether they were told what its contents were, I don't know.

Mr. Alberts told me he understood there was in this affidavit statements of Thomasma which attacked the originality and the date of the Larson drawings which Mr. Alberts was relying upon to carry, to establish the date of Mr. Larson.

Mr. Alberts stated that he was afraid that the drawings he was relying upon were not true drawings, that they were misdated.

He told me he had been utterly unaware of that fact, if it were a fact, that he had assumed they were gen-1081 uine.

He said that he had talked with his client and that they were—that is, with Mr. Larson and Mr. Carlsen—and that they were willing to concede priority; that he thought the interference ought to be settled; that he had suggested my name to represent Mr. Larson and Mr. Carlsen and that they would like to come over to see me and that the reason he couldn't handle it on behalf of Larson and Precision Company was because there was a contract between these persons and Snap-On, his regular client, and he was afraid that a conflict might come between their interests, that is, Snap-On on the one hand and Precision and Larson on the other hand, and, hence, he had advised them to get different counsel.

Q. Now, did Mr. Alberts tell you in this telephone conference that Larson and Carlsen or either of them had confessed to Mr. Alberts that they had committed perjury?

A. No, he didn't tell me that.

Q. Now, how long did this conference which you had on November 29th with Larson and Carlsen last?

A. I can't tell you that because there is no division on

my time sheet between the items of 'phone confer-
1082 ence with Mr. Alberts and the personal conference with Messrs. Carlsen and Larson but the two of them together are noted as two hours.

Q. And what was said in the conference between you, Carlsen and Larson, Mr. Hobbs?

A. Well, these gentlemen came in and introduced themselves to me. I had expected them to come.

They told me what Mr. Alberts had told me, so far as the pendency of the Interference was concerned; that Mr. Alberts had represented them and that your office, and I believe they specified Mr. Fidler, had been representing Zimmerman; that some proofs had been taken; that they testified; that Mr. Alberts had told them about the Thomasma affidavit; that they were willing to concede priority.

I was interested in more than a concession of priority because of the fact that if that alone were done, it would be very possible that, if they had any business, that that would be the end of it.

So, I proceeded to inquire of them about their business, what they had sold, whether they had orders on hand to sell, what commitments they had and their contract with Snap-On which Mr. Alberts had mentioned to
1083 me.

Mr. Larson at the same time at this conference told me about a new wrench he had or was developing, and I don't profess to remember his exact words obviously, but he told me that he wasn't much longer interested in the application that was in Interference because of this new wrench and that he would like to be kept in business in the wrench he was then selling until he got the new wrench on the market, he had material ordered and he didn't want to have that material come and have to take it and not have anything to use it for.

I told Mr. Larson at the time that we would take the commission to try to settle the Interference.

And they also told me, Mr. Larson or Mr. Carlsen, or both of them, that Thomasma, about whom Mr. Alberts had told me, had been one of the incorporators of Precision and owned a block of stock.

The number of shares I cannot recall except by reference to some of my letters. I do recall they said it was one-third of the stock of the company.

They were not in a very kindly frame of mind about

Mr. Thomasma and thought he had double crossed them when they wanted to get their stock back.

1084 Q. Now, at this conference did Mr. Larson and Mr. Carlsen tell you they had perjured themselves?

A. No, they didn't tell me and, on the other hand, I didn't inquire because, as I conceived my obligation in the settlement of this matter, it was immaterial whether they had perjured themselves or not. I was interested in keeping them in business and with giving as little as I had to to their opponents.

Q. Have you ever read any of the Interference testimony given by Mr. Larson and his witnesses?

A. Not a word of it, sir.

Q. Have you ever read the Thomasma affidavit?

A. No, I have never read the Thomasma affidavit. I heard Mr. Ooms read a few words of it this morning while I was in the court room.

Q. Now, after your conference with Larson and Carlsen on November 29th, what did you do?

A. I wrote, I believe it was the same day, to Mr. Fidler and told him we were engaged in the matter; that we thought it was a case where a settlement could be reached and the clients had indicated that and I would like to see him about it.

I think I said in the letter, too, that when he got 1085 the letter to call me, and we would arrange to see each other.

Q. Did you get together?

A. We got together and it was at Mr. Fidler's home. I had a telephone call from him in which he told me he was at home and would be there some time, so, I went out to Mr. Fidler's home.

Q. Mr. Hobbs, I am handing you a volume of correspondence, copies of exhibits, which have been offered in evidence, the exhibits being Plaintiff's Exhibit 16 and Plaintiff's Exhibits 29 to 50, inclusive, and Defendants' Exhibits 23, 63, 66, 68 and 73.

I am handing you these exhibits to give time, Mr. Hobbs, and I will ask you if you will just glance through those and state whether or not those letters are all letters, that is, a large part of it, letters and correspondence which passed between you and Precision and Larson, between you and Mr. Alberts, between you and Mr. Fidler and

myself, and between Mr. Alberts, Mr. Fidler and myself, so far as you were aware of the correspondence?

(Handing papers to witness.)

A. I won't take the time, Mr. Counsel, unless you
1086 wish it, to inspect everyone of these, word for word.

Q. You can look at them later.

A. As I skim through them, I think this is the correspondence to which you refer. I see photostats of my signature which I recognize, and our letterhead.

Q. Did you give the date of the conference which you had with Mr. Fidler?

A. No. It was on the 2d of December, as reference to my time sheets indicates to me.

Q. Who was present at that conference?

A. Mr. Fidler, Mr. Edward Haight, and myself. I asked Mr. Edward Haight to go out with me to see Mr. Fidler for two reasons:

In the first place, I have a great deal of confidence in his judgment and I wanted to talk to him about the matter and get his reaction to what I had in mind to propose to Mr. Fidler.

And, secondly, I wanted him to be generally familiar with what was going on in this case because I was quite busy at the time and had anticipation of two or three trips out of town and wanted somebody in the office to carry on. In fact, during this time, I did go out of town.

1087 Q. Now, does your letter to Mr. Larson of December 4, 1940, Defendants' Exhibit 63, relate to the conference which you had with Mr. Fidler?

A. Yes. Previous to the writing of this letter I had talked with Mr. Larson and the letter indicates that it is a summary to Mr. Larson, a written one, of what I had told him that morning about my conference with Mr. Fidler on the previous day.

Q. Now, will you please read to the court the first paragraph of this letter of yours of December 4th and state whether that contains the essence of what you discussed with Mr. Fidler in the previous conference you had with him?

A. The first paragraph reads:

"This letter reviews the conference of some length which we had this morning. As we told you, we had a conference on Monday with Mr. Fidler. We told him we were not

interested in reading the record or making any investigation of facts further than was necessary to establish what was to be done to establish the interests of everyone. This seemed to be Mr. Fidler's viewpoint. We told him that we were willing to concede priority; that we wished
1088 an appropriate release of damages, and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments. We believe that Mr. Fidler is in agreement on principle."

Now, that does represent and summarizes the conference which I had with Mr. Fidler at which Mr. Edward Haight was present.

Q. Now, in that conference was there any discussion of the Larson testimony or the Thomasma affidavit?

A. No, there wasn't. Mr. Fidler started to tell me about the testimony and about the Thomasma affidavit and I told him I wasn't interested in that, that my commission was to settle this interference and that I didn't think it was relevant or pertinent to what I was trying to do.

Q. Did Mr. Fidler say anything about perjury at all in that conference?

A. No. I stopped him. What I am trying to indicate to you is, I stopped him from talking about it. I didn't want to hear the conflict of testimony.

Q. At this conference did you offer or suggest that you would recommend to Larson that he offer and submit
1089 to us a simple concession of priority without any conditions attached?

A. No. That I was afraid to do and would still be afraid to do because of the fact that if a simple concession of priority were filed, I could foresee that the next day, or as soon as you could, you might issue the Zimmerman patent and then you would sue us for patent infringement and then the customers of Precision would be liable to charges of infringement for their use, they would be back at Snap-On and Snap-On would be back at Precision.

I wasn't willing to concede a priority without something to go with it.

Then I had this thought in my mind because the litigation was rather fresh in my mind, that it had been represented to me that Mr. Thomasma was an employee of Automotive, and that he was one of the incorporators of Precision, and I was recalling what had happened in A. O. Smith *vs.* Petroleum Iron Works litigation I was in and

as I could view it, you might get the idea if you knew of the decision in that case that your sole remedy did not lie in patent infringement, but that you might sue for breach of confidential relationship and I had to do
1090 something, as I saw the rights of my client, to protect him and his customers against such action.

Q. Will you please refer to your letter to Mr. Fidler of December 6th, that being Defendants' Exhibit 66?

Mr. Lindsey: If your Honor please, I have a few copies here of the most important letters. I didn't have an opportunity to make a full set.

(Handing papers to court.)

Q. Do you recall that letter to you, Mr. Hobbs?

A. Yes, I do.

Q. In that letter you suggest a concession of priority on the part of Larson and an appropriate release to Larson and Precision coupled with a non-exclusive license of a limited nature under the Zimmerman applications back to Larson and Precision.

Isn't that the substance of your proposal?

A. Yes, with the foregoing condition in the last paragraph that we get the stock back from Thomasma.

And I wrote to Mr. Thomasma making a demand for that stock but I hadn't heard from him and so I make the suggestion in this letter you might be able to help us to get that stock back, inasmuch as you had secured an affidavit from him.

1091 Q. Now, will you please refer to Mr. Fidler's letter to you of December——

A. I should add, as I look at the second page of that letter, Mr. Lindsey, that it isn't my signature appearing there. It is that of Miss Savage, my secretary. It was probably signed after I left the office on after I had went out of town.

Q. But you did dictate the letter?

A. I did dictate the letter, yes. My initials are on it as the dictator.

Q. Now, will you please refer to Mr. Fidler's letter to you of December 6th, 1940, Plaintiff's Exhibit 29?

To save time, I will read the second paragraph of that letter:

"I took up the matter with Mr. Wacker as soon as possible after our conference last Monday, and he informed me that it would be satisfactory to terminate the Interfer-

ence as proposed by you,"—the letter was being written to you, Mr. Hobbs, "—namely; by Larson conceding priority to Zimmerman and by payment to Automotive Maintenance Machinery Co. of a sum equal to a certain
1092 royalty per wrench for wrenches already made and wrenches on order and to be made in fulfillment of orders already given, and further agreement to discontinue the manufacture and sale of the wrench as soon as the orders on hand had been filled."

Now, that was the proposition which you had suggested to Mr. Fidler originally in the conference which you had at his home, is it not?

A. That is correct if by proposition you mean general terms and principles of a settlement.

Q. General suggestions, yes. And that suggestion did not come from Mr. Fidler, it came from you primarily, did it not?

A. Oh, it came from me because those suggestions were made essentially as they are recited in this letter to Mr. Fidler at his home.

Q. Does your worksheet show you had two conferences over the telephone with me on December 11, 1940, Mr. Hobbs?

A. Yes, sir.

"Conference with Larson and 'phone conferences with Alberts and Lindsey."

Q. Will you tell the court what took place over the
1093 telephone in our conversation?

A. Some of that conversation I remember very distinctly and some of it not so well.

The part I don't remember so well, but I think my recollection is accurate, is that you said you were just getting into the matter and you had heard from Mr. Fidler about our talks with each other and communications about a settlement; that you had a proposition to make and it was a take-it-or-leave-it 24-hour proposition.

That made me mad and I told you I didn't care if you or your client was Hitler, you couldn't push me around and I was through negotiating if that was the basis upon which negotiations were to proceed.

I was very angry. You were, too. My secretary heard the telephone conversation and she told me I wasn't a gentleman and that I should apologize to you and you either called me or I called you later in the day and we did

apologize to each other and I invited you to come to the Union League Club next day to have lunch, you and Mr. Fidler, and we would talk about settlement and we did have luncheon the next day.

Q. Now, I hand you Plaintiff's Exhibit 59, which is entitled:

1094 "Minimum terms for total settlement."

Do you recall having seen that before this trial?

A. No, I have never seen that before, Mr. Lindsey. I take it your question involves the original as well as the photostat.

Q. Oh yes.

A. No, I have not seen that.

Q. I might say we are putting in photostats and originals and copies rather indiscriminately.

A. Yes. I don't recall, Mr. Lindsey, that I even let you state a proposition to me after you told me you had one that had to be taken in 24 hours.

Q. Now, what transpired at the conference on December 12th at the Union League Club which was attended, as I recall, by Mr. Fidler and yourself and me?

A. I can recall that luncheon very clearly for two reasons.

In the first place, we had venison stew, which was a rather unusual meal, and, in the next place, I introduced you and Mr. Fidler to Catherine Keeler.

After having heard a couple of letters read in evidence in the court room this afternoon, I now understand why you and Mr. Fidler were pleased to meet Mrs.

1095 Keeler.

We talked about the settlement of the lawsuit. You wanted 10 per cent royalty and I told you that was simply out of the question, they couldn't pay it.

We had offered you three per cent. I think the 3 per cent was only on unfilled orders and you wanted 10 per cent on everything that had been made as well as what would be made and that was out of the question.

That was our principal discussion and you seemed to think I was sincere in my statement that 10 per cent was out of the question and you and Mr. Fidler told me that you would try to figure out some other basis of payment than 10 per cent which we might be able to meet.

Q. And as a result of that meeting on December 12th, we submitted to you a joint contract, that is, where Auto-

motive was one of the parties and Snap-On and Precision other parties, is that correct?

A. Yes, on the next day you and Mr. Fidler came to my office, Mr. Alberts came to my office, and the four of us conferred there and you had a drafted contract.

It was, as I recall it, a three-party contract, that is, Snap-On as one and Precision and Larson as the second and Automotive as a third, all in one document.

1096 And Mr. Alberts objected to that. He wanted to have a contract between your client and Snap-On separate from the settlement between Precision and Larson on the one hand and Automotive on the other.

Q. That was the meeting on December 20th in your office?

A. No, that was the day after our luncheon.

Q. I mean December 13th? That was at your office?

A. Yes, sir.

Q. And Mr. Fidler and Mr. Alberts and you and I were present, is that correct?

A. That is right.

Q. And there was a general discussion of terms at that time, a further discussion?

A. There was a discussion of terms and going over your form of contract.

What I am about to say now is a conclusion and reconstruction and not my recollection but it was apparent that that contract was not satisfactory to Mr. Alberts and me or me because we did not get together.

Q. And was there any discussion at that conference of any testimony that Larson had taken or of the Thomasma affidavit?

1097 A. No, Mr. Lindsey, because I was still going on the basis I started out that I wasn't interested in the conflict in testimony between Mr. Larson and Mr. Thomasma.

Q. Now, you received, did you not, on or about December 17th a copy of Mr. Alberts' letter to Mr. Fidler dated December 17, 1940, marked Defendants' Exhibit 73?

A. I have, I got a copy of that letter.

Q. And in that letter Mr. Alberts devoted several pages to the matter of who was the inventor of another wrench, that is Larson and Walraven, and then set forth some proposed terms which had not been discussed before

in connection with the question of settlement, is that correct?

A. That is correct. I think you should add for perfect accuracy that some of the things in Mr. Alberts' propositions had been discussed.

Q. Yes, but some of them had not?

A. And some of them had not.

Q. Now, you had also received, you also received, did you not, a copy of my letter to Mr. Alberts of December 18th, Plaintiff's Exhibit 29, together with a notice of taking testimony?

A. I have a photostat here of a letter which I
1098 think is yours to Mr. Alberts dated December 18th but it is marked Exhibit 30. Are we talking about the same one?

Q. Exhibit 30? I am sorry. I got the numbers mixed up. You are correct. You received a copy of that?

A. Yes, I received a copy of ~~that~~ letter. I don't recall whether I got a copy of the notice of the taking of testimony.

Q. Now, will you please refer to Exhibit 32, which is a letter from Mr. Alberts to you?

A. Yes, I remember that letter.

Q. Now, you will note in the middle of the page Mr. Alberts refers to withdrawing as attorney for Kenneth R. Larson in view of the alleged charges and countercharges that certain testimony of Larson and Carlson was not the entire truth. Do you know what those charges and countercharges were?

A. Only as they were recited to me by Mr. Alberts when he first called me and told me of the Thomasma affidavit.

Q. Now, you will recall that a copy of our notice of taking testimony accompanied this letter of Mr. Alberts to you of December 18th?

A. Yes, and my recollection is clearer on the enclosure of a substitute power of attorney.

1099 Q. Yes.

A. I said a moment ago I remembered this letter very well because it was the second time in that matter that my anger flared up because Mr. Alberts attempted to accept service of that notice with my name, being some legend at the bottom of it, which I saw and recited in one of my letters to Mr. Larson. It wasn't the fact I had been substituted.

In fact, I had told Mr. Alberts and Mr. Larson both more than a week before I couldn't go on with the interference or any litigation that might grow out of it and told them my reasons.

Q. And in your letter to Mr. Alberts of December 19, 1940, Exhibit 34, you say:

"I told Mr. Larson a week or more ago that if the above matter could not be settled, we were not in a position to proceed to represent him. We made the same statement to you last Saturday, the 14th, in the presence of Mr. Fidler and Mr. Lindsey. We are therefore unwilling and unable to accept or to file your substitute power of attorney, which we return herewith."

Now, do you recall advising Mr. Fidler and myself 1100 that you would not handle the Interference in this conference which we had previous to December 19, 1940?

A. Yes; I have a recollection of that.

I have a more permanent recollection of the fact that the statement that I sent to the client was for a retainer for settlement.

Q. Do you have a copy of that statement with you, Mr. Hobbs?

A. No, I have our office copy.

Q. Would you mind reading that statement into the record, please?

A. This statement is dated December 4, 1940:

"Precision Instrument Manufacturing Company, 1846 Minor Street, Des Plaines, Illinois.

"To retainer for professional services re settlement of Larson-Zimmerman Interference.

"Charges to be credited against the retainer, $250.00." which was promptly paid.

Q. Now, was our action in serving the notice of taking depositions and the demand for the production of this untranscribed testimony of Larson's and his witnesses justified, that is, the serving of that demand and no- 1101 tice on Mr. Alberts rather than on you?

A. Well, you certainly—

Mr. Freeman: That is certainly objected to.

The Court: Objection sustained.

Mr. Lindsey: Q. Now, will you please refer to your letter to Precision of December 18th, 1940, Plaintiff's Exhibit 33.

A. Yes, I have it.

Q. And note on the second page you say:

"Quite properly, therefore, in serving a notice of the taking of depositions, the attorneys for AMMCO and Zimmerman addressed it to the attorney of record in the Interference, sending a copy to us, 'merely to keep you fully advised'."

Now, the attorney of record in that case was Mr. Alberts, was it not?

A. Well, it wasn't I or my firm.

Q. But you say "to the attorney of record." At that time Mr. Alberts was attorney of record for Larson, was he not?

A. My point in answering as I did was that Mr. Alberts had so informed me. I have no personal knowledge of it.

Q. Now, what next happened, Mr. Holbs?

1101½ A. Well, after when?

Q. After you had received these letters, this letter of December 18th, for example, several of them. What happened after December 18, 1940? What was the next thing you did?

A. Well, the next thing I recall after the things or happenings on the 18th was the conference in your office, I mean, the office of your firm, with Mr. Alberts present, Mr. Fidler present, you present and I was present.

That conference was in Frank Parker Davis' personal office and we there discussed the terms of settlement, not in generalities but specifically, and we dictated and wrote out in longhand paragraphs and parts of contracts.

You had split up the one contract into two. We had a draft before us to work with. I had seen Mr. Larson the day before in my office and knew pretty well what I had wanted to do.

Mr. Fidler excused himself on one or two occasions to phone to your client. I am using the word "you" as plural.

And I think Mr. Alberts also excused himself from the room saying he was going to phone to Snap-On.

1102 And, at the conclusion of the conference, we were pretty much in agreement. You were to get the document into final shape and we were to get the papers executed.

Among the things that had to be done were to draft mutual releases between Thomasma and Precision and I

drafted that. There were assignments to be drafted and I drafted some of those, I think, and Mr. Alberts others.

Q. And then the agreements were submitted to you by Mr. Fidler on December 23d, were they not?

A. Well, they were—

Q. I will refer you, Mr. Hobbs, to Mr. Fidler's letter of December 23, 1940, Plaintiff's Exhibit 36.

A. I am looking at the letter and that would seem to fix the date when the drafts were sent to me because the letter is addressed to me and says:

"I enclose two copies of the Automotive Precision-Larson agreement."

Q. Now, in this conference on December 20th in the office of Mr. Davis, was there any discussion of the Larson testimony or of the Thomasma affidavit, as you recall?

A. No, I do not recall any.

Q. Now, do you recall a conference or a meeting which was held in our offices at which were present Mr. Fidler, Mr. Alberts, yourself and me the day before Christmas of 1940?

A. Yes, sir.

Q. Where was that conference held? In what part of our offices?

A. Also in Mr. Frank Parker Davis' personal office.

Q. What was the occasion for that meeting, Mr. Hobbs?

A. We had the papers executed by our respective clients and Mr. Larson and Mr. Carlsen were at my office in the morning of that day to sign the papers that they were required to sign in the settlement.

Mr. Edward Haight went past the door and I hailed him. He came in and talked with us generally about the settlement.

After my clients had finished signing the documents they were required to sign, I then went over to Mr. Alberts' office. I don't know whether it was immediately afterwards or whether I had lunch between times.

But I went to Mr. Alberts' office and we took a cab down to your office and he had his papers and I had mine and we waited in the reception room until you and Mr. Fidler came out and you were in the process of having your Christmas party and you took us into Frank Parker Davis' office, and we exchanged documents.

There were three things that are in my mind that weren't then completed. The first was that the contract provided

that my client was to be licensed to fulfill existing orders and there was some limitation as to the amount and beyond that amount then royalty.

So, I had to have a statement of what was on order and I hadn't gotten it from my client yet and so I couldn't give it to you on the 24th.

The second thing was that an objection was made to the assignments that we proffered you because they were not acknowledged assignments and wouldn't be self-proving under the statutes.

And then the third thing was that Mr. Larson in the conference in the morning in my office had raised an objection to one of the provisions and his point was very well taken because it called upon Precision to do something they would be unable to do by way of making a report of orders and, so, he wanted that changed and I asked you gentlemen to change it and you said you would get Mr. Wacker to agree to that change and without rewriting the document 1105 you would have him initial the change and with the exception of those three things, that terminated the settlement.

Q. Now, in that regard will you please refer to Mr. Fidler's letter to you of December 28th, Plaintiff's Exhibit 39, in which Mr. Fidler says:

"I am pleased to return herewith the fully executed copy of the Automotive-Precision-Larson agreement."

and then later he said:

"As to other clean-up matters that we discussed last Tuesday, I will be glad to go into the same with you whenever you are ready."

Now, I will ask you, did you read Mr. Ooms' opening statement made to the court on March 27th?

A. Yes, I did.

Q. Were the implications in his statements with respect to those clean-up matters warranted or not?

A. The clean-up matters I—

Mr. Freeman: I object to that.

The Court: Objection sustained.

Mr. Lindsey: Q. What were those clean-up matters Mr. Fidler refers to?

A. The clean-up matters I understood Mr. Fidler 1106 to be referring to were the correction of the assignments and the furnishing of the statement of wrenches on order and Mr. Larson—Mr. Alberts and I were cooperat-

ing in correcting the assignment before we ever got Mr. Fidler's letter.

Q. Now, will you please refer to Mr. Fidler's letter of December 26, 1940 to Mr. Rafferty, the reporter who Mr. Alberts had employed to take the Larson testimony?

The letter indicates you received a copy. Do you recall that?

A. Well, I recall a copy of a letter written to Mr. Rafferty but I don't find it in this—What is the exhibit number?

Q. It is Exhibit 16, Mr. Hobbs. If I may just step around here—this is the letter (indicating).

Now, you will note at the top of the second page of this letter Mr. Fidler said:

"In terminating this matter, it was agreed that you would deliver up the foregoing material, as well as all copies of the transcript of such testimony now in your possession, to Mr. Alberts." Do you recall any such agreement?

A. Yes, I do and—Well, I guess I have answered your question. Yes, I do.

Q. Now, just state what that agreement was and where it was reached, will you, Mr. Hobbs?

A. Well, when I first saw Mr. Fidler out at his home, I told him we did not want to go to the expense of having this testimony transcribed, the matter was going to be settled.

Hence, when it was settled, there was considerable of it that wasn't transcribed and this statement in the letter that it was agreed that the—copies of the transcript in his hands and so forth would be delivered to Mr. Alberts was talked of either now on December 24th, but I think more likely on the 20th because on the 24th we were cleaning things up and getting ready to get home. I was anxious to get home that day.

Q. Was Mr. Alberts present or not when that agreement was reached, do you know?

A. Yes, he was present, if I am correct in my recollection it was either on the 20th or 24th because he was present both of those days.

And I am sure that was the understanding because I had some responsibility for the fact that it wasn't transcribed.

1108 Q. Now, will you please refer to Mr. Fidler's letter to you on December 31, 1940, Plaintiff's Exhibit

23. It is a one-page letter toward the back of that volume, Mr. Hobbs.

A. Yes, I have it.

Q. In which Mr. Fidler thanks you for your letter of the 30th enclosing a corrected assignment of the Larson application.

Now, near the bottom of that page, Mr. Fidler says:

"As to the testimony and Thomasma's statement now I am holding everything subject to your call."

Did you understand what that meant when you received the letter?

A. Yes, I did.

Q. What?

A. I wanted to be sure that you and Mr. Fidler had knowledge of the fact that Mr. Thomasma had made this affidavit and what he had said in it and of his relationslip, so I had been advised, I meant in the affidavit, with Automotive and Precision because I wanted to fasten on you knowledge that would hold you to the release to our customers, and I don't claim credit for being cautious 1109 about that. It was suggested to me by Edward Haight.

Q. Why was it that you wished this material to be preserved by Mr. Fidler, particularly the Thomasma affidavit?

A. Because you had given us a release in this contract that would prevent you from bringing any action for breach of confidence because of the relationship of Thomasma to Precision and Automotive and I wanted to be sure I could always fasten that knowledge onto you and so I had asked Mr. Fidler to hold that testimony and that affidavit.

Q. You mention Mr. Ed Haight. Did you discuss that proposition with him?

A. I did. I discussed with him the A. O. Smith case and the Foley case which we had in our office and were familiar with.

Q. In connection with the Thomasma affidavit, you discussed those cases with Mr. Haight?

A. Yes, and his advice to me was well taken and I followed it.

Q. Now, will you please refer to the exhibits toward the end of this volume I handed you, the exhibits being 43 to 49, and comprising correspondence and a statement of wrenches.

Will you just look at those exhibits I have referred to?

A. Well, the statement of wrenches is the one that was given to you belatedly. It isn't marked with an exhibit number, Mr. Lindsey. I am referring to this (indicating).

Q. No, that is attached to one of the exhibits, Mr. Hobbs.

A. One we gave to you belatedly in connection with the contract of settlement to indicate the number of wrenches that were on order.

Q. That was one of the clean-up matters, was it not?

A. That was one of the clean-up matters. The letter indicates it was mailed to you on the 4th of January.

Q. Now, did you hear Mr. Alberts testify that after our conference on December 24th that you said to him, and I quote his testimony:

"Come over to my office and I will give you a drink and you will feel better."

A. Well, I don't recall that and I think it was quite impossible for it to have happened because of the fact I went from your office directly home. I took the bus and went home, which is an unusual thing for me to do, but it was right there on Michigan Avenue. If I had come back to my office, I would have had to wait for a late afternoon train on the New York Central and I wanted to get home.

My mother and father were there for Christmas. After I thought this thing over, I recalled I took some moving pictures of them when they were there and I checked up the dates on the film and the pictures were taken on that day and the day following. I was quite anxious to get home because when your parents are getting to eighty-six they are crowding their time.

Q. You didn't return to your office?

A. I did not return to my office.

Q. You heard Mr. Alberts' testimony about a bonfire, did you not?

As I recall, Mr. Hobbs, correct me if I am wrong—the first day Mr. Alberts testified you were not in the court-room but you were the second day?

A. I was not here the first day but I was the second day.

Q. On the second day you heard me ask Mr. Alberts about his testimony of the bonfire and quoted his testimony of the previous day, is that correct?

A. Correct.

1113 Q. Probably I had better read part of the record in that regard; I was questioning Mr. Alberts:

"Q. Now, you had quite a little bit to say about a bonfire?

"A. That is right.

"Q. And you discussed this bonfire with Mr. Hobbs?

"A. I wouldn't say I discussed. On the way home from that December 24th meeting, and that is all I would call it, a meeting for exchange of contracts in the outer office—we didn't even see the party. We just heard there was a party in progress, I mean the noise of that party. We were in the reception room at that time and I was—I brought my contract and Mr. Hobbs brought his—

"Q. I am asking about the bonfire. I am not wanting to know about the contracts. We have got those in. Let's get along.

"A. Well, when we went back, nothing much was said for awhile. I told Mr. Hobbs that I still didn't feel very good about the whole thing.

"Q. Let's talk about the bonfire.

"A. I am getting to that.—And that I felt, that 1114 that was the wrong thing to do and I said, 'By the way, I didn't see them hold the bonfire.' He said, 'Well, we will hear from them.' And then he said, 'Come on over to my office and I will give you a drink, you will feel better'."

"Q. Well, now, did Mr. Hobbs say he had an understanding with us, Mr. Fidler and me, that there would be a bonfire?

"A. He didn't say it that way. He said there was a suggestion of a bonfire.

"Q. Now, who had made that suggestion of a bonfire?

"A. He said there was a suggestion of a bonfire. I am sure Mr. Hobbs did not suggest it, so it must have been Mr. Fidler. He had stated in the December 15th conference, if everything was settled, the evidence would be done away with.

"Q. So, Mr. Hobbs indicated it was Mr. Fidler that was going to destroy the evidence, is that right?

"A. No, he didn't mean Mr. Fidler was going to destroy the evidence. He indicated Mr. Fidler had suggested 1115 all the parties throw their records into the bonfire.

"Q. Oh, he had just suggested it?

"A. No. Who are you talking about, 'he'?

"Q. Mr. Fidler had just suggested there be a bonfire, is that right?

"A. He had just suggested there would be a bonfire.

"Q. Did you agree to have a bonfire?"—

Then, later I read the testimony Mr. Hobbs had made or given the day before; I am not going to take the time to read it all. What have you got to say about this bonfire?

A. There was no suggestion of a bonfire; and as I stated a few minutes ago, I wanted the testimony preserved, and I so told Mr. Fidler, and he agreed that it would be. Mr. Alberts was to have the stuff from the court reporter, his notebooks and transcript; and that was to be preserved.

Q. And that was the purpose of the agreement, that those matters would be turned over by the reporter to Mr. Alberts, is that correct?

A. Yes, sir.

Q. And did you ever hear Mr. Fidler or me sug-
1116 gest a bonfire?

A. No.

Q. Did you ever hear Mr. Fidler or me, or anyone else in connection with this matter, during these negotiations or immediately following it, say that everything would be done away with?

A. No, I have no recollection of that, Mr. Lindsey; and if you had suggested it, you would have got the answer that I wanted it preserved.

Q. Was there ever any suggestion or implication on the part of any of us that there would be a bonfire, or evidence would be suppressed or destroyed?

A. No; if I were going to destroy evidence I wouldn't even tell my secretary, let alone the lawyer on the other side of a lawsuit.

Q. Did you ever destroy any of your files in connection with this controversy?

A. No, sir. No, I think my file is utterly intact.

Q. Were those files turned over to Defendants' present counsel?

A. Yes; I had a letter from my former client saying Mr. Ooms was going to represent him in the matter; and I had the file, and got it out and gave it to him.

1117 Q. I show you a letter from Carlsen addressed to you, dated July 7, 1942, calling on you to turn over

all your papers to Mr. Ooms; did you follow those instructions?

A. I followed those instructions, with one minor exception: In our office we have two files on a lawsuit, one we call the bill file, and the other is the working file; and the bill file has in it those matters which relate to fees and disbursements. And when I handed the file over to Mr. Ooms, the working file, there wasn't in it the letter of December 4th which I discovered only a few days ago had got into our bill file; and the only reason I can assign for it being misfiled is because it makes reference to the fact that the letter encloses a statement. And as soon as I found that letter I sent it up to Mr. Ooms. He is in the same building.

Q. And you turned the rest of the files over to Mr. Ooms in July of 1942, is that correct?

A. That is right.—Oh, there is one other thing, Mr. Lindsey, I did not give to him, because I didn't know the significance of it then, a longhand memorandum that had a lot of figures on it. And as I examined that thing the other day and found it was dated,—it has on it a list of numbers of wrenches on order, and sizes and prices; 1118 that was a yellow memorandum in my own handwriting, and that was not included in the file.

Q. Now, Mr. Hobbs, you have known for some years that an Interference may be settled by concession of priority signed by the inventor and approved by the assignee; and that the opposing party can do nothing to stop that; isn't that correct?

A. Why, that has been my understanding for several years.

Q. Did you ever offer, on behalf of Larson or Precision, to either Mr. Fidler or me or to Automotive, a simple concession of priority, without any conditions attached?

A. No; I said before, I didn't want to do that; I was afraid to do that. My client might have been out of business before Christmas.

Q. You would not have been satisfied with that kind of arrangement, would you,—as you have already testified?

A. No, I would not.

Q. Now, do you know whether Mr. Alberts during these negotiations was willing to have Snap-On reassign the Larson application to Larson in order to permit him to

sign a valid concession of priority, as shown by any correspondence in this file?

1119 Mr. Freeman: We object to that question, in so far as he is asking as to what Mr. Alberts was willing to do. He should ask him as to what Mr. Alberts told him or said. As the question is framed, we object to it.

Mr. Lindsey: Well, I will withdraw the question.—

Q. You heard Mr. Alberts' testimony about how willing he was, and anxious, to grant a concession of priority, didn't you?

The Witness: A. Well, I heard some discussion of that on cross-examination; I didn't hear any of the direct examination of Mr. Alberts, except a very few questions at the end.

Q. Well, you heard his testimony to the effect that that is what he suggested to you, and all along he was anxious to do it?

A. Yes, that is right.

Q. Well, now, what is your recollection as to his position on that, as stated to you by him or as shown in any correspondence?

A. Well, my recollections of it are this: That he mentioned in the first conference with me that his client was willing to concede priority; and the next step, in my memory, is the letter that Mr. Alberts wrote to me that

1120 the Snap-On Company was willing to reassign the application to Larson, to do with what he saw fit, or something of that sort; I don't remember discussions with Mr. Alberts, between the two of us, as to concession of priority alone.

Q. Well, now, I will read from Mr. Albert's letter to Mr. Fidler of December 17th, Defendants' Exhibit 73; you have already testified you had received a copy of that letter. In this letter Mr. Alberts states, "Without the concessions herein made by Snap On Tools Corporation Larson and his nominee could not effect a settlement with the Autopotive Maintenance Machinery Company, and this proposal has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation, irrespective of the outcome of this controversy." And then I want to read from Exhibit 32, which is a letter from Mr. Alberts to you of December 18, 1940, in which Mr. Alberts states, "Further, I wish to advise that my client, Snap-On Tools

Corporation, shall be ready and willing to reassign Larson's Patent Application Serial No. 232723 to Larson just as soon as Mr. Larson can furnish tangible security to indemnify Snap-On Tools Corporation for any damages occasioned to it by virtue of Larson's or his nominee's 1131 inability to comply with the terms of the agreement of September 28, 1940." I further read from your letter to Mr. Alberts, Exhibit 34, the letter being dated December 19th, in which you say, "In accordance with your letter,—" That is Mr. Alberts' letter, which I just referred to—"We will advise Mr. Larson that it is your client's desire to reassign the Larson Application Serial No. 232723, which we understand is the application in Interference, but that this desire is conditioned upon Mr. Larson's furnishing tangible security to indemnify Snap-On for any damages occasioned by the inability to comply with the terms of the contract of September 28, 1940."

Now, do those passages refresh your recollection as to what Mr. Alberts had to say on this matter of concession of priority?

A. Well, it refreshes my recollection as to the communications we had about assignment of the patent. And to that extent would indicate that there was not discussion between me and Mr. Alberts of a mere concession.

Q. And throughout these negotiations, was Mr. Alberts negotiating and maintaining that certain conditions should be attached on behalf of Snap-On?

A. Well, that one you last read is an example, 1122 where he wanted tangible security that we would fulfill our commitments to Snap-On. It is impossible of fulfilment.

Q. And you so stated, did you not, to Mr. Alberts?

A. I stated in that letter of December 19th, from which you just read, Exhibit 34.

Q. Will you read the passage that you refer to?

A. "Under the circumstances, the condition imposed seems to us unreasonable. Further, we know of no security available."

Q. Now, Mr. Alberts testified that he had a telephone conference with you on December 11th, and that he then prepared his memorandum bearing that date, the memorandum being Defendants' Exhibit No. 72; and I will ask

you to look at the first item and read it; read the first paragraph in the first item, if you will, Mr. Hobbs.

A. Aloud, or to myself?

Q. You better read it out loud, so the Court can get it.

A. Mr. Hobbs called and advised that their negotiations with AMMCO through Fidler have resulted in nothing other than the following arbitrary demands: One, Wacker wants Snap-On to pay the difference between AMMCO's former selling price and Snap-On's present selling price on an amount equivalent to about three 1123 dollars on every wrench that has been sold to date.

Q. What is your recollection as to our having made such a demand?

A. Well, I do not remember any such thing as that, Mr. Lindsey. If any such thing were made, Mr. Alberts is right in calling it arbitrary. It is possible that your demand—I am not figuring this out mathematically, but it is possible that your demand for a ten per cent royalty might have come somewhere near that mathematically, where we were offering only three per cent; but I do not recall any such terms ever submitted to me.

Q. Now, in the Precision and Larson answer in which the charge of perjury and compounding of perjury is alleged for the first time, the answer was filed on February 8, 1943, and Mr. Ooms was the attorney for Larson and Precision. Prior to that date; that is, February 8, 1943, had Mr. Ooms approached you and asked you as to your recollection of the facts in this case, before making those charges?

Mr. Freeman: That is objected to, as to what Mr. Ooms as counsel for Precision talked to Mr. Hobbs—

The Court: How is that material?

Mr. Lindsey: I want to show, may your Honor 1124 please, that this suit was recklessly brought by Mr. Ooms, without the slightest justification. Mr. Hobbs was representing Mr. Larson and Precision at the time. Before bringing these charges against reputable attorneys,—

The Court: Mr. Hobbs was representing whom?

Mr. Lindsey: He was representing Larson and Precision.

The Court: I thought he disclaimed the fact he was representing him. I thought he insisted that all these notices should be served on Alberts.

Mr. Lindsey: No, if your Honor please, in the negotiations there is no question that Mr. Hobbs was representing Precision and Larson: as far as the Interference was concerned in the Patent Office, Mr. Alberts was the formal attorney of record.

The Court: In other words, he was just representing him so far as this settlement was concerned.

Mr. Lindsey: That is correct. I think it is proper to show this suit was recklessly brought.

The Court: He may answer the question.

The Witness: I have forgotten the question.

Mr. Lindsey: Read the question, please.

(Question read by the reporter.)

1125 - The Witness: A. Mr. Ooms rode home with me one night, if my car; it is more accurate to say I drove him home, to his home; and he told me that he had become interested in this case. It was about the time that I turned the file over to him. He asked my recollection of it; I told him I had not looked at my file from the date it was closed; and that as far as I had been concerned in the lawsuit, I was not interested in whether or not there had been perjury, because it was immaterial to my commission and the obligation I had undertaken.

Q. Did Mr. Ooms ask you if we had made any threats, or agreed to have a bonfire; or did he ask you about this letter of Mr. Fidler that refers to cleanup matters, and about holding the testimony and the Thomasma affidavit subject to your call?

A. No, he did not.

Q. Did Mr. Alberts at any time ask you about those matters before making these charges in the Snap-On suit?

A. Well, I answered your last question on the basis of the date in the file when the answer was filed.

Q. Well, I think Mr. Alberts made those charges about the same date, definitely, or a little before that.

A. Mr. Alberts did not talk with me about the mat-

1126 ter at all until, oh, a week or ten days ago.

Q. Now, did you hear Mr. Alberts talk about how unfair these contracts were?

A. No, I do not recall that I did.

Q. Did you ever advise your clients, Snap-On and Precision, that these contracts in issue here were fair, particularly the Larson and Precision contract?

A. Confining my answer to that, because it had nothing to do with Snap-On?

Q. Yes.

A. Yes, I told my clients I thought they were fair and reasonable, and advised them to sign it, both in writing and orally.

Q. Did that particular contract afford the objectives and the purpose which you were seeking from the outset, as stated in your early letter to Mr. Fidler?

A. I think so; yes.

Q. Now, did you know at the time these contracts were entered into that Precision and Larson had another wrench which they contemplated manufacturing?

Mr. Freeman: He has already answered that once.

The Court: I thought he had; I don't know of any necessity for going over it again.

1127 Mr. Lindsey: Q. Now, you know, do you not, that the defendants; that is, Larson and Precision, and also Snap-On, have pleaded that the contracts in issue were unfair because Automotive or its agents or attorneys coerced the defendants in executing the contracts by threats of prosecution for perjury, and that there was an understanding and an agreement to suppress the evidence; you know those general allegations, do you not?

A. I know those general allegations not from reading the pleadings but from reading the statements of counsel in court at the time that Mr. Larson's discovery deposition was taken. They are set out generaly.

Q. Well, now, what have you to say as to any threats, or any agreement, any coercion implied or expressed, by either Mr. Wacker, Automotive, Mr. Fidler, or me, or any one else connected with Automotive exerted by way of duress, or made by way of threats of prosecution or otherwise, to you or to Larson or to Carlsen, or Precision, or any one connected with Precision?

Mr. Freeman: That is objected to, as leading.

Mr. Lindsey: I am asking what threats were made; it is not leading at all.

Mr. Freeman: Ask him what threats were made, 1128 by whom and to whom.

The Court: The objection is overruled. Let him answer the question shortly. Let us bring this to an end, if we can.

The Witness: A. There were no threats made to me, Mr. Lindsey; and no threats made to any one in my pres-

ence. But I will say that is either directly or by inference. And I think you found out when you tried to hurry me into the settlement that it would not have done any good to try to threaten me.

Mr. Lindsey: Q. And did you convey any threats to Larson or Carlsen, or Precision, or to Alberts or Snap-On?

A. No, I did not; no threats of mine or any one else.

Q. One of the conditions of settlement which you fixed was that Thomasma's stock would be returned; that is, his Precision stock; isn't that correct?

A. That is right.

Q. Now, there were many statements made by Mr. Alberts and Mr. Carlsen and Mr. Larson about threats; I am not going to read all of them. There are some statements here about they having revealed perjury to you. I am just going to take an example or two from page 91 of the transcript: Larson testified that the first conference
1129 he had with you as follows: "We did not relate the entire testimony; but we told him that there had been some false testimony; that we wanted an attorney that would try to settle it, and as peacefully as possible. We didn't want to be turned over to the District Attorney for it." Did he tell you there was any false testimony, or that he did not want to turn over to the District Attorney?

A. He didn't say anything about District Attorney, or turning over to the District Attorney. He did tell me about the drawings that he had worked on and that Thomasma had worked on.

Q. Did you tell Larson and Carlsen that they better sign the contract or they would go to jail?

A. No, I did not. If a client does not accept my advice, he gets another lawyer.

Q. And did you tell Carlsen and Larson that the evidence would be destroyed as soon as the settlement was made?

A. No. I have previously tried to tell you that I wanted that evidence preserved.

Q. Then, to shorten this, any testimony on the part of Mr. Alberts, Mr. Larson, or Mr. Carlsen as to any threats of prosecution, any statements as to perjury, bon-
1130 fires, you deny; is that correct.

A. I do.

Mr. Lindsey: Your witness.

Cross-Examination by Mr. Freeman.

Q. Mr. Hobbs, how long were you at Mr. Fidler's home when Mr. Haight went with you there at your first conference?

A. Oh, I would say from an hour to two hours. I left after lunch, and I was home for dinner that night, and went up to North Evanston and back in the meantime.

Q. And do I understand that when Mr. Larson and Mr. Carlsen first came in to you; that is, on November 29th, that you were not acquainted with the circumstances of this case with respect to the Thomasma—with respect to Thomasma having made a drawing which Mr. Larson testified in the Interference a high school boy made?

A. This is the first time I have ever heard of a high school boy. I have been told by Mr. Alberts over the telephone that Mr. Thomasma stated that he had made 1131 drawings that were being put in evidence to prove Larson's date.

Q. And when did you first learn that Larson had committed perjury in the Interference?

A. I don't know to this day that Larson committed perjury in that Interference.

Q. You knew that there was something wrong in the Interference, when Larson and Carlsen came to your office with respect to a settlement, did you not?

A. I knew that they were willing to settle the suit and concede priority.

Q. And you knew and had an understanding of the circumstances with respect to that situation at that time, on November 29th, did you not?

A. That knowledge and understanding that I got from the telephone conference with Mr. Alberts.

Q. And when you wrote to Mr. Fidler on November 29th,—and I am asking whether you have your file copy; I notice the letter was not included with the group used by Mr. Lindsey—you wrote Mr. Fidler on November 29th as follows: "We have been engaged by the Precision Instrument Manufacturing Company of Des Plaines to represent it and its inventors' interests in what we understand 1132 is an Interference in the Patent Office between the parties Zimmerman and Larson. We have some understanding of the circumstances and situation which has developed. Would like to confer with you about the mat-

ter at your early convenience—about Monday, if possible. Will you please phone me upon receipt of this letter, so that we can arrange a conference."

Do you recall such a letter to Mr. Fidler?

A. Yes; yes.

Q. I would like to now ask you just what was the circumstances and your understanding of the situation with respect to Larson at the time you wrote the letter on November 29, 1940.

A. What Mr. Alberts and Mr. Larson and Mr. Carlson had told me on that day.

Q. And what did they tell you on that day?

A. Mr. Alberts told me that he feared that some of the drawings that had been—a drawing or drawings, I don't remember which he said—were falsified as to originality and date. And I am not trying to say that Mr. Alberts used the words originality and date; I am giving a conclusion that we drew. That he thought it was a case that should be settled, and he was sending the clients
1133 over, if I were willing to take on the matter to settle it.

Q. And that did Mr. Larson tell you at that time, when he came over to see you on November 29th?

A. He said that it had been recommended by Mr. Alberts that I might be able to settle the Interference, and would I take that job; and I said that I would. And I did not inquire into the reason why Mr. Alberts was willing to concede priority, or why Mr. Larson was. As I said on direct, by inquiries were as to their business and what they had to protect.

Q. You know, as a patent lawyer, that if Larson's testimony was true he was entitled to prevail in the Interference, and there was no need for a settlement of any kind; you know that, do you not?

A. Certainly.

Q. And with that information, are you now telling us that you didn't know that there was something wrong with respect to Mr. Larson's position in the Interference case?

A. I am not trying to say that, Mr. Freeman; what I
1134 am trying to say is that Mr. Alberts, Mr. Larson were prepared and wanted to settle that Interference, and that that was my job.

Q. And your job, as I understood from your direct

testimony, is to see that Mr. Larson's interests were protected?

A. As best I could do it.

Q. And you were not interested in reading the Larson testimony?

A. No, sir; I was not; I have not read it.

Q. And you were not interested in reading the Thomasma affidavit?

A. I was not.

Q. When did you get the information with respect to the Thomasma affidavit that brought about your request that the Thomasma affidavit be preserved so that you could tie up Mr. Lindsey and Mr. Fidler; or maybe I should say AMMCO to the Thomasma affidavit in connection with this settlement?—You know what letter I am calling to your attention, the one where Mr. Fidler wrote you as to the settlement, wherein he stated with respect to the testimony and the Thomasma affidavit, "I am holding it subject to your call?"

A. Mr. Alberts told me in his telephone conversation on the 29th that Thomasma had been or was an em-
1135 ployee of Automotive; and I learned either from Mr. Alberts or Mr. Larson, or Mr. Larson came in, that Thomasma was a stockholder in Precision; and he told me that in connection with getting his stock back, and why he wanted it back. That is what brought to my mind the question of confidential relationships.

Q. And although you have never seen the Thomasma affidavit, you were willing to protect your client's interests by merely tying up the Thomasma affidavit with AMMCO or its counsel?

Mr. Lindsey: Read that question.

The Witness: I don't understand your question, Mr. Freeman.

(Question read by the reporter.)

Mr. Freeman: Q. I am referring to your direct testimony, wherein you testified that you wanted to connect up Thomasma's statement matter with either counsel for plaintiff or plaintiff itself.

A. Well, I don't think I said that; I wanted to be sure that the knowledge that these gentlemen who were giving me the relief had was preserved, so that that knowledge could always be fastened on to them, that they knew what

they were releasing, that they had knowledge of the
1136 facts. I obviously did not discuss with them what I had in mind, or suggest to them that I wanted a release because they might sue for breach of confidential relationship.

Q. Well, you asked for a release of the civil damages, did you not?

A. Yes, sir.

Q. And did you get it?

A. Yes; I got a good, broad release.

Q. Don't you think that type of release would likewise have covered the Thomasma statement matters?

Mr. Smith: If your Honor please, the framing of these questions is entirely wrong. He has said over and over again he was not trying to tie into the Thomasma statement—there has been no testimony that he was trying to tie into the—

The Court: Let him answer the question.

The Witness: Read it, Mr. Reporter.

(Question read by the reporter.)

The Witness: A. Well, if I understand your question, the release was intended to cover the situation that might develop if we were sued for breach of confidential rela-
tionship; and I wanted that information preserved as
1137 to what I had been informed Thomasma said. That is what I mean by tying in the Thomasma affidavit.

Q. And you were not interested in reading or becoming acquainted with the Thomasma statement matter, other than what Mr. Alberts told you, or Mr. Larson told you?

A. That is right.

Q. Now, what was to be done with respect to the testimony on December 31, 1940; why was that to be held, and how does that tie up?

A. December 31, 1940—

Q. So we are both clear, Mr. Hobbs,—I am not trying to ask any trick questions. This is a hard job, for one counsel to examine another counsel; but I am asking for an explanation of the letter of December 31, particularly that part which Mr. Lindsey read to you, wherein Mr. Fidler said, as to the testimony and Thomasma statement matters, "I am holding everything subject to your call."

A. Well, I will try to state it again, Mr. Freeman; it is the same thing we have been talking about: That I wanted that preserved, so that the knowledge could always

be fastened on to Mr. Fidler and Mr. Lindsey, that they knew about the relationship of Thomasma to Automo-
1138 tive and Precision; so that they could not say we released something without knowledge of the facts.

Q. And do you likewise tie up the testimony now, along with the Thomasma statement matter; I mean, are you using both of those things as the tie-up with Messrs. Lindsey and Fidler?

A. Yes.

Q. The testimony and the Thomasma statement?

Mr. Lindsey: He has answered the question, may your Honor please.

The Court: I didn't hear you, Mr. Lindsey.

Mr. Lindsey: I say, he has answered the question. Mr. Freeman is just repeating questions here.

Mr. Freeman: Q. Now, going back to Mr. Fidler's home, the meeting that you had there, when Mr. Haight was present,—please tell us what took place.

The Witness: A. Mr. Haight and I got to Mr. Fidler's house in a cab; and the door was opened to us, not by Mr. Fidler. We were shown into Mr. Fidler's den. He was lying on his back on a daybed. I sat opposite the head of the bed, and Mr. Edward Haight sat opposite the foot of the bed; and we talked obviously about his health, and how he felt; exchanged the usual courtesies.

1139 And I told him why we had come out, to discuss the settlement of this matter. He said he was glad to talk about it. And then he started to talk about the testimony and the Thomasma affidavit, and I stopped him. I told him in that I was not interested; that on the question of settlement, I considered that immaterial. I told him that I wanted to keep the client in business; that they had wrenches on order,—I meant to fulfill orders; and they had material ordered for the building. They had customers who were using the wrenches, that had to be protected; that we were willing to concede the priority; that we wanted a release broad enough to cover the use by the customers, and that we wanted a license.

And I cannot now, Mr. Freeman, recall whether I limited the license to fulfilling the orders, or whether I wanted a license under the entire life of the Zimmerman patents; I don't remember that.

Q. I was just coming to that, because I understood you to say that your letter of December 6th to Mr. Fidler, and

Mr. Fidler's letter to you of December 6th were practically the same with respect to what you proposed and what Mr. Wacker proposed; and I would like—

Mr. Lindsey: I object to the question; because the
1140 witness never said that, Mr. Freeman.

1141 Q. What was your purpose of seeing Mr. Fidler
1142 on December 2, 1940?

A. To attempt to settle the Interference.

Q. And the background with respect to the position that your client was in was given to you by Mr. Alberts over the telephone, is that correct?

A. That is correct, and supplemented by what Mr. Carlsen and Mr. Larson told me when they came in following the conversation with Mr. Alberts.

Q. And Mr. Alberts had told you that he was representing an adverse party, a possible adverse party?

A. That is right.

Q. So that we know exactly what information you obtained from your client, will you now tell us what information you received from Larson and Carlsen that gave you the necessary background or information in order to properly advise your client as to their rights; and I am referring to your clients, because you were representing both Kenneth R. Larson as an individual and Precision Instrument Company.

A. That is right; both of those two. I repeat that I inquired of them of their business, what they were manufacturing, learned from them that they had sold wrenches, that they had others on order, that they had orders
1143 for material with which they expected to make further wrenches; that one of the customers of Snap-On, who I understood from my conversation with them was Precision's sole outlet, was the United States Government or some of its agencies; and that Mr. Thomasma held one-third of the stock of Precision.

Q. That is, you had learned from Messrs. Larson and Carlsen that the torque wrenches made by Precision were sold in turn to Snap-On, and by Snap-On to the United States Government?

A. Yes; but not that all of them were sold to the United States Government. And by United States Government, I mean agencies of the Government.

Q. Yes, the Air Corps and the Army and the Navy.

A. Yes, that is what I mean.

Q. And of course, you know that there isn't any liability on any safes made patentwise prior to the issue of the patent, do you not?

A. Will you repeat that?

Mr. Freeman: Read it, please.

(Question read by the reporter.)

The Witness: A. Well, if by patentwise you mean there is no liability for infringment prior to the issuance 1144 of a patent, I know that; I agree to that.

Q. Then my statement was correct?

A. Yes.

Q. And no patent had issued to AMMCO on any of the applications involved in the Interference at that time?

A. That is right.

Q. And you know now that no patent issued to AMMCO until after the 6,000 wrenches had been fully disposed of?

A. I don't know that, Mr. Freeman; I don't know when the patents issued, and I don't know when the 6,000 wrenches were disposed of.

Q. You will agree with me that there would be no patent infringement for which Precision was liable if the sale of the 6,000 wrenches had been completed prior to the issue of any of the Zimmerman patents?

A. I think that is right.

Q. And you know further that even after the termination of an Interference, the applicant who loses the Interference is still in position to test the validity in a District Court of the United States.

A. That is true, undoubtedly.

Q. And that even though the applicant in an Interference loses the Interference, he is still in position 1145 to question the scope of the claims with respect to infringement?

A. That is right.

Q. And you were interested in seeing that your client stayed in business; have I stated that correctly, remained in business?

A. Yes.

Q. And you knew that when you approved the agreement, that after your client had made those 6,000 wrenches, your client was through?

A. No, I didn't know that; I don't mean to quibble about 6,000; I take it, we are not arguing about whether it was 6,000 or 6,500.

Q. No, I am not questioning that, Mr. Hobbs.

A. Yes, I so assumed, Mr. Freeman. No, they told me about the new wrench that they had. And when I say I was interested in seeing them continue in business, I mean I wanted them to still sell without interference the wrenches that they had on order, and fulfill their orders and be protected in them, and their customers. And that by that time that they would possibly have this new wrench in production. So that if that was the tiding over a period, they would be in position to go ahead and keep on.

Q. Were you interested in whether or not your 1146 client would make the new wrench?

A. To some extent, I was.

Q. And did you examine the new wrench in the light of your agreement as to the validity of the claims of the Zimmerman patent, which claims were not even involved in the Interference?

A. No, I didn't see the new wrench, and I do not recall that Mr. Larson explained it to me in detail at all. He told me that it involved a different principle, I don't know whether Mr. Alberts knew about the new wrench, or knew about it in detail.

Q. I am asking you about what you knew.

A. Well, I didn't know except as I was informed by Mr. Larson; and I am sure I saw no drawings of it, nor the wrench itself.

Q. So that when you stated you were interested in keeping your client in business, you really meant in permitting your client to sell those wrenches for which it then had orders; is that correct?

A. Well, I certainly meant that

Q. And you did not mean continue in business over and beyond the particular amount of wrenches which your client had already sold or on order, or had outstand-
1147 ing commitments for; is that correct?

A. Yes, I meant that, too.

Q. You meant that your client should continue over and above the number of wrenches which it then had outstanding commitments?

A. Yes, referring to that new wrench, if that did not infringe some outstanding patent, or some that might be issued, that was available to them also.

Q. You knew that you were stopping your client from ever testing the validity of not only the claims that were

involved in the Interference, but of any other claims which were then in the Zimmerman application and not involved in the Interference, or any claims which the attorneys for Zimmerman might thereafter write and inject in the Zimmerman applications, did you not?

A. Yes, I think that is right. I am not looking at the contract as I answer; I do not remember the wording of it as I sit here. I think the admissions of validity went to any claims that might be secured on the basis of the disclosures of those applications; which is perhaps saying in another way just what you said.

Q. You are not in disagreement with my statement?

A. No; no.

1148 Q. And you didn't know whether or not the new wrench that Larson was going to put on the market, or continue with, by which he could continue in business, which was one of your objectives, was met headon by claims then involved in the Interference, or claims which were in the Zimmerman applications which were not in the Interference, did you?

A. No, I didn't know that.

Q. Now, tell us who suggested that the Larson application, your client's application be assigned lock, stock and barrel to the plaintiff in this case?

A. That suggestion came either from Mr. Fidler or Mr. Lindsey.

Q. It was not your suggestion?

A. It was not my suggestion, no.

Q. And the assignment of the application gave to AMMCO more than it would have got by a mere concession of priority, is that correct?

A. Well, I don't want to answer that question yes or no, because I don't know.

Q. Well, you know now that there has issued a patent upon the Larson Application?

A. I have been so informed.

1149 Q. So you know now that AMMCO got more by taking over the Larson Application than he would have gotten if it merely had received a concession of priority?

A. No, I don't know that, Mr. Freeman; because if the fact that they have got a concession of priority, and had issued the Zimmerman patent as promptly as they could, I feared that they would stop the fulfillment of the orders

of the wrenches that were on hand. I cannot sit and use hindsight and compare the thing that did happen with something that did not happen, and say which is the better.

Q. I was merely asking you with respect to the Larson Application; you know, as a patent lawyer, that when a concession of priority is granted the one who gives the concession does not get the claims that were involved in the Interference; you know that, don't you?

A. Oh, yes.

Q. And you know that when Larson gave the concession of priority he gave to Zimmerman everything that was involved in the controversy then pending in the patents; you know that to be a fact, don't you?

A. I think you have not said in your question what
1150 you meant to say.

Q. You understand what I want to say, answer it.

A. I think you just misspoke a word. Read it back.

(Question read by the reporter.)

The Witness: A. No, I don't know that.

Q. Well, you know that when you give a concession of all the claims involved in the Interference, you are giving up everything in respect to the Interference, are you not?

A. Yes, I know that; but that was not your previous question.

The Court: The difference involved there is whether you are giving up what is involved in the Interference or the Patent Application.

The Witness: Yes, that is what I am talking about.

The Court: I don't know much about this, but I can see the point. There may be other claims, but they cannot be involved in the Interference.

Mr. Freeman: That is what I was trying to bring out.

The Court: He brought it out.

Mr. Freeman: Q. So that the record is clear, when you give a concession of priority in an Interference case, of all the claims involved in the Interference, you then
1151 give to the other side everything of the controversy; is that correct?

A. You give to the other side everything that is in the count in the Interference.

Q. In issue.

A. In issue in the Interference.

Q. And there might be claims still left in the appli-

cation that was not involved in the Interference; is that correct?

A. That is correct.

Mr. Lindsey: If your Honor please, I am going to object to this; it has no bearing, this lecture on patent law—

Mr. Freeman: It is not so much a lecture on patent law as it is getting right down to the heart of this thing.

The Court: There is so much that I did not enjoy that this interests me.

Mr. Freeman: Q. Have you answered my question? Read it, please.

(Question read by the reporter.)

The Witness: A. I think I did.

Mr. Freeman: Q. So that when Larson assigned his application he gave something to AMMCO over and above that which was in issue in the Interference; is that correct?

1152 A. That is right.

Q. And who suggested that as to those claims which were then in the Larson Application, or those which might be written in the Larson Application, be recognized as to validity and scope?

A. Well, it certainly came from representatives of Automotive; I cannot tell who—I don't remember whether it was Mr. Fidler or Mr. Lindsey; and they were the only two persons I was dealing with. The matter of the assignment of the application came up after my objection to the ten per cent royalty.

Q. Well, did you determine whether or not any of those additional claims in the Larson Application might be readable upon what Larson proposed—when I say Larson I mean Precision likewise—

A. Yes.

Q. —proposed to do after it had cleaned up its commitments of some 6,000 wrenches, in order to stay in business, which was one of your objectives?

A. I lost the question, Mr. Freeman; will you read it back?

(Question read by the reporter.)

The Witness: A. No, I did not determine that.

1153 Q. And did you advise either Mr. Larson or Mr. Carlsen or Precision that when they assigned the application they might be faced with the claims which were then being transferred to AMMCO as against any new wrench which Larson or Precision might thereafter make?

A. I think I did, Mr. Freeman; I think they understood that.

Q. You gave no opinions?

A. I gave no opinion as to whether they would or not.—Well, my language is not very good; as to whether the new wrenches might infringe claims that might be secured, I gave no opinion as to that.

Q. Yesterday Mr. Lindsey asked you, and I am now reading from page 797 of the record:

"Did that particular contract afford the objectives and the purposes which you were seeking from the outset, as stated in your early letter to Mr. Fidler?"

And you answered, "I think so, yes."

Do you want to at this time make any qualification in either your answer; or any further explanation?

A. No.

Q. Are you satisfied today that you did obtain, in the agreement that was executed by your client as of
1154 December 29, 1940, the objectives which you were seeking from the outset, as stated in your early letter to Mr. Fidler; and that last part of my question I have read from the question asked you by Mr. Lindsey?

A. I am; I think I did the best I could.

Q. That is not answering my question; there isn't any disagreement as to what you did, Mr. Hobbs; I am merely asking you now whether or note in the agreemtent of December 20, 1940, you obtained the objectives which you were seeking from the outset, and as stated in your early letter to Mr. Fidler?

A. Yes.

Q. Do you have the letter of December 6, 1940, which your wrote to Mr. Fidler?

A. Yes, I have it here, Mr. Freeman.

Q. And the first proposal was that Larson would concede priority to Zimmerman; that was done, was it not?

A. That was done.

Q. And is there anything in your letter of December 6th about giving to AMMCO a complete or total assignments of the Larson Application?

A. No.

Q. And is there anything in the letter that you
1155 wrote to Mr. Fidler on December 6th, that Larson and Precision would recognize the validity of any claims over and above what estoppel might arise by way

of a concession of priority in the claims involved in the Interference?

A. No, except as the license that is referred to in the third item of that letter will involve a recognition of the patent.

Q. You gave more than merely recognition of the kind that a licensee gives to the licensor?

A. I think that is right, Mr. Freeman.

Q. And there isn't anything in your proposal or in your outline of December 6th to Mr. Fidler that in any way talks about the validity of claims not involved in the Interference?

A. That is right.

Q. That was something over and above?

A. If you want to put it that way, something over and above, I have no objection. I was trying to get a license of as broad a scope as I could.

Q. And you were trying to get a license for the future, were you not;—that was not too clear yesterday, and I now ask you to tell us whether or not the license that

1156 you asked for would have permitted Larson and Precision to continue in business on after its present commitments; and by present commitments I mean those which it then had on order.

A. The letter states that on orders received subsequent to the date of settlement Precision would pay three per cent on the sales price.

Q. And is there any limitation as to when the three per cent would discontinue, or when Precision or Larson would have to discontinue its license?

A. No, there is not.

Q. And as a matter of fact, you then intended, and the letter still means today, that you were asking for a license to continue in business for the life of the patent under which your client was going to be licensed; is that correct?

A. I think that is right.

Q. And you were not going to pay any royalties, according to your proposal, on those items for which Larson and Precision then had orders on hand; is that correct?

A. That is right; nor for those that had been previously sold.

Q. And you were going to get a release as to those

1156 that had been previously sold, so that there would be no comeback from AMMCO customers of Precision and Larson; is that correct?

A. That is right; that is what I meant by the item numbered 2 in the letter.

Q. Now, Item No. 2 you take up claims of civil damages; had any suggestion been made to you by Mr. Fidler in your conference of December 2, 1940, that there might be made a case for civil damages?

A. No; this suggestion is mine. I think that is referred to in a previous letter, the letter of December 4th.

Q. Not to Mr. Fidler; the letter of December 4th that was sent to your client.

A. The letter of December 4th to Precision Instrument.

Q. And what does it say with respect to civil damages, the letter that you have just referred to?

A. I didn't hear you, Mr. Freeman.

Mr. Freeman: Will you read the question?

(Question read by the reporter.)

The Witness: A. I will read the sentence to which reference was made: "We told him—" Interpolating that as Mr. Fidler—"that we were willing to concede the priority, that we wished an appropriate release of
1157 damages, and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments."

Q. So you told Mr. Fidler that you wanted a release for damages?

A. Yes.

Q. When you talked to him on December 2nd; and you obtained such a release on December 20th, in the December 20th, 1940 agreement, a good, broad one, as you stated; that is correct, is it not?

A. That is the way I would characterize the release.

Q. Well, did you ever tell your clients that you were going to fasten on—and I used the word, to yesterday—the Larson testimony and the Thomasma affidavit with Messrs. Fidler and Lindsey, so that there would never be any question about their having knowledge of Thomasma's connection with AMMCO, and likewise with Precision.

A. I do not recall, Mr. Freeman, whether I did or not; I am quite certain I did not attempt to give them a lecture on law of confidential relationships.

Q. Mr. Alberts was in some fashion co-counsel at least; he was representing some one substantially in the
1158 same boat as your client; is that correct?

A. In some respects in the same position.

Q. Even though there was adverse interests, and you were protecting your client and he was likewise protecting his client?

A. That is right.

Q. And still there was something?

A. There were common interests.

Q. Common interests that both you and Mr. Alberts were interested in, in behalf of your respective clients; is that right?

A. That is right.

Q. Did you ever tell Mr. Alberts that you were getting a particular kind of a release, and that you were using the Thomasma affidavit, and the Larson testimony, as a tie on with Messrs. Fidler and Lindsey?

A. I don't think I did; I don't think I got any particular kind of release. My proposal was to have the release as broad as I could get it, so that it would cover what I had in mind. I am a little bit confused about what you mean by tie on, or fasten on to Mr. Lindsey and Mr. Fidler the Thomasma affidavit. I mean that I wanted to have available information that if it became necessary I could prove that they had the knowledge. They already had it, but I wanted to be able to prove that they had it.

Q. And the information that you received with respect to the Thomasma affidavit came to you from Mr. Alberts; is that correct?

A. That is right.

Q. And you as counsel for Precision and Larson were willing to take Mr. Alberts' statement with respect to what was in that affidavit?

A. Yes, I was willing to take his statement as to what was in the affidavit; and it was supplemented by what Mr. Larson told me that he had been informed as to what was in the affidavit. I think, Mr. Freeman, that most of the information about relationship of Thomasma to the two companies came to me directly from Mr. Larson.

Q. You know now what I meant about the fastening of the Thomasma affidavit and the Larson testimony?

A. I think that was my language; I think I used it yesterday. I am not sure that you understood what I was trying to say by it.

Q. Now, why did you stop Mr. Fidler from telling you

about the case when you first met him and went out
1160 to his home with a view of a settlement?

A. It was immaterial to what I wanted to do. And then I think I also had a selfish reason, that I did not want to take the time to go into all of that material which I considered to be not pertinent or germane to a settlement; certainly, to have gone through all of that would have been extensive in time, which I would have expected Precision to pay for.

Q. They paid all your bills, did they not?

A. Oh, yes.

Q. Weren't you interested in getting all of the facts and background at the outset, so that you could properly advise your clients of their legal rights in this case?

A. Why, I think I was interested in getting all the information that I considered pertinent and material, when the client came in and said that he wanted to settle the Interference and have me to do the best job I could.

Q. And you started on the basis that your client wanted to settle, without finding out any reason why your client should settle?

A. I was retained to settle the Interference.

Q. Now, as a matter of fact, wouldn't you have to
1161 know what the facts were, or the position of your client, so that you could properly advise your client as to what it should do under the circumstances?

A. No, I think not; I was not advising him as to whether to settle. I started out on the premise that I was to settle. That is what I was engaged to do.

Q. And you started out on the premise of settlement of the kind outlined in your letter of December 6, 1940; is that correct?

A. As nearly as I could achieve that; that is what I was trying to do.

Q. And would you say that you nearly achieved that?

A. I think I did.

Q. Do you think that the contract of December 20, 1940 is coextensive with your proposal of December 6, 1940 to Mr. Fidler?

A. No, I don't think it is coextensive, Mr. Freeman.

Q. In other words, you kind of backed away?

A. There was bargaining back and forth.

Q. And your client gave up certain rights from the posi-

tion that it took, as outlined in your letter of December 6, 1940; is that correct?

A. That is right.

1162 Q. And what did you use as the yardstick by which you measured how far your client could recede from the position that you outlined in your letter of December 6, 1940?

A. Conferences and discussions with the client? And—

Mr. Lindsey: Let him finish.

The Witness: No, I have finished.

Mr. Freeman: Mr. Hobbs is quite able to take care of himself, it is obvious.—

Q. And what did your client tell you then, between the dates, between the 6th of December up to December 20, 1940, at these conferences where you began to recede from the position that you took on December 6, 1940?

A. Well, as each proposition was advanced, or a change in the terms that were suggested by any of the three parties involved, they were discussed with Mr. Larson; and I believe a time or two with Mr. Carlsen,—I am not sure of the latter; or by communications, by letters with them; and the things were agreed upon as the result of those discussions.

Q. Could you tell us what Mr. Larson and Mr. Carlsen, either of them, told you so that your could give them the advice with respect to how far they should go with respect to their concessions; I understood you to say yester-

1163 day that if a client did not take your advice, the client looked for a new lawyer.

A. I don't think I can state further than I have; and I think the thing is pretty well summarized in the advice I gave the client and the conferences that you had in the letter of December 18th, which is in evidence,—my letter to Precision of the 18th.

Q. That is the letter where you said that Precision was in a precarious position; I think that is the first sentence of the last paragraph on page 1 of that letter.

Mr. Lindsey: That is Exhibit 35, Mr. Hobbs.

The Witness: All right. I just found it. Yes, that is the letter.

Mr. Freeman: Q. And you told Precision that it was in a precarious position?

A. That is right.

Q. Now, what did you mean when you said that without

the settlement Precision is in a precarious position, between the upper millstone of AMMCO and the nether millstone of Snap-On, the outlook for the future is not sanguine.

A. On the morning I wrote that letter there had been delivered to me by messenger from Mr. Alberts' office a letter saying that tangible security had to be posted

1164 that Precision would fulfill its contracts with Snap-On. The other reference to AMMCO is the fact that if the Zimmerman patent issued there would be a suit, and the outstanding orders might not be fulfilled; or if they were fulfilled, there would be charges of patent infringement; and customers that had theretofore been sold would be subjected, or could be subjected, properly stated, to patent infringement suit for use.

Q. Had you already explained to your client prior to December 18th the position that it was in?

A. I haven't a recollection of it, Mr. Freeman, but I think I must have done it.

Q. Well, what did you intend your clients to gather from the statement of your letter of December 18th, that it was between the upper millstone and the nether millstone without a settlement?

A. Just what I have said in the letter, and what I have said to you now from the stand. I think I referred in this letter to the demand for security; I am not sure.

Q. Well, what did you want to convey to Messrs. Larson; that is, to Mr. Larson and to Precision Instrument Company, and I note your letter is addressed to both Precision and Kenneth Larson?

1165 A. What I have said, and what I wrote.

Q. That is, that your client without a settlement was in a precarious position?

A. That is right.

Q. And without a settlement your client was between the upper millstone of AMMCO and the nether millstone of Snap-On?

A. That is right.

Q. Now, what millstone did AMMCO have on your client at the time you wrote this letter?

A. They had the Zimmerman patent application, and the interference, and the possibility of the infringement suits that I have just mentioned.

Q. Isn't that all predicated upon the basis that Zimmer-

man would prevail in the Interference, and that Larson's testimony was not the truth?

A. It was predicated on the idea that Zimmerman would prevail in the Interference.—

Q. Where did you get that information, that Zimmerman would prevail in the Interference?

A. I got that from Mr. Alberts in the first telephone conversation.

1166 Q. And you took the information from Mr. Alberts as the basis for making the statement contained in your letter of December 18, 1940?

A. Yes.

1167 Q. Even though he was counsel for a possible adverse party?

A. The information that had come to me from Mr. Alberts was what he had obtained when he was counsel for both parties.

Q. But he told you from then on you were representing Larson and Precision, or, at least, that he was not representing Larson and Precision?

A. In the settlement. And the reason he wanted some other counsel was because, as he stated to me over the telephone, he thought there might be an adverse interest arise between Snap On and Precision because of the fact that Zimmerman would probably prevail in the interference.

Q. As a matter of fact, Mr. Hobbs, didn't you want to paint a picture by use of the upper and lower millstones to Mr. Larson and to Precision Instrument Company that they would understand they were in a tough spot?

A. Well, I think that the tough spot is, perhaps, a slang phrase, modern language, that shortens that maxim or adage I used in the letter.

Q. You wanted to paint a picture to them, did you not, so they would understand? You weren't talking to counsel or lawyers or highly educated individuals, you were

1168 talking to workmen, were you not?

A. Mr. Larson is a workman. I don't know how highly educated he is.

Q. You wanted him to get the picture that he was in a precarious position or tough spot?

A. I stated that in the letter, precarious position.

Q. The only statement you have made in respect to

AMMCO's upper millstone is the fact they might have the Zimmerman patent issued, is that correct?

A. I think that is the principal thing.

Q. And had they had the Zimmerman patent issued, they would have had a right to have their day in court?

A. That is right.

Q. And that right was given up with respect to the validity of the Zimmerman patent when the agreement of December 20th was signed, is that correct?

A. That is right, that was given up. Other things were obtained.

Q. Now, by the way, Mr. Lindsey asked you yesterday about the telephone call you had from Mr. Alberts on either November 28th or 29th and you referred to your worksheets.

Now, as a matter of fact, your worksheets do not
1169 show whether or not you called Mr. Alberts or he called you? Would you look at your worksheet and tell us now?

A. Surely, I will look at them. I don't need to to answer your question. I know they don't reveal that.

Q. So, your worksheets do not show that Mr. Alberts called you?

A. No, they do not. That is my recollection, that he called me, and I referred to the time sheet for the date.

Q. Now, you were not interested in the Interference that Larson was in, so I have been advised. That is correct, is it not?

A. Well, I am not sure, Mr. Freeman, that I completely understand your question. I was not interested in the merits of the Interference or the proofs that had been given.

Q. Turning to your letter of December 18th to Precision and Larson, I would like to have you tell us upon what you based the following statement and I now read from your letter, Page 2:

"We think you should give very serious consideration to whether you desire to spend any additional funds on the Interference."

A. You want to know what I meant by that?

1170 Q. Yes, in the light of what you said yesterday that you weren't advising them in connection with the Interference.

A. Well, I had reference in the letter to the state of

the Interference, the expense that would be involved in the continuation of the testimony and the briefs and arguments, whatever might ensue in the Interference if it weren't settled.

Q. And if Larson's testimony were true, Larson would be sitting in the driver's seat today; is that correct?

A. I don't know.

Q. He would have prevailed in the Interference?

A. I don't know.

Q. Are you telling us now that you recommended or said to Mr. Larson:

"We think you should give very serious consideration to whether you desire to spend any additional funds in the Interference,"

without knowing whether Larson could or could not prevail?

A. That is right, Mr. Freeman. Maybe I erred but that is what I meant.

Q. Regardless of whether Larson could or could not prevail?

1171 A. That is right. Now, I hope you have in mind, as you ask these questions, as I have in answering, about Mr. Alberts' statement to me that he feared there had been drawings that were not valid and that he was questioning their originality and the date.

Q. You didn't predicate that statement or advice to your client with respect to your client spending money in the Interference on any statements made to you by Mr. Alberts, no mention about Mr. Alberts having told you?

A. You mean no mention in this letter about it?

Q. Yes.

A. No, there isn't.

Q. And upon Mr. Alberts' statement to you made at the outset, you were willing to recommend to your client not to proceed in the Interference or spend additional funds, is that correct?

A. That was one of the factors, one of the measures I had in mind, certainly.

Q. Now, Mr. Hobbs, in that same letter I would like to have you tell me what you meant when you wrote to Precision and Larson by "damages arising out of the Interference and the incident circumstances"? Just tell us what were the incident circumstances.

1172 A. The thing I referred to there, Mr. Freeman, was that dual relationship of Thomasma to the two companies.

Q. And nothing with respect to the making of a drawing, Larson's Exhibit 27, in the Interference?

A. No, I did not have that in mind. I don't see how that drawing could give rise to any cause of action or who made the drawing.

Q. And you know that if Larson had conceived the invention in 1934, regardless of what connections there may have been between Precision and AMMCO by way of Thomasma in 1936 or 1937 or 1938, Larson was still entitled to prevail and there would be no incident circumstances?

A. No, I didn't know that because I didn't know the date Mr. Larson claimed. I didn't know the date or precisely the date when he made—when it was, the origin of the relationship between him and Precision on the one hand and Thomasma on the other hand.

Q. You do agree with me that if the relationship between Precision and Thomasma and AMMCO was subsequent to Larson's conception in this case that there would be no incident circumstances?

A. I don't think I can agree to your statement quite as broadly as you make it. I don't mean to be technical but, if you will, use the word "invention" instead of "conception," so there will be a complete invention.

1173

Q. With that change in the question, you go ahead and answer it.

A. Yes.

Q. So, you didn't know at the time that you were talking about incident circumstances whether Larson had his invention earlier than Thomasma's connection with Precision?

A. No.

Q. And, I take it, that when you first wrote to Mr. Fidler on the 29th wherein you said: "We have some understanding of the circumstances and situation which has developed," that you now likewise interpret that to mean Thomasma's connection with AMMCO and Precision?

A. That and the thing that had been told to me by Mr. Alberts and Mr. Larson.

Q. Were you told at any time that Larson had falsified in his testimony?

A. No, I wasn't told that.

Q. Were you ever told that Larson's drawing which he used as Exhibit 27 in the Interference was not genuine?

A. I never was told that any drawing was not 1174 genuine. I don't know what Exhibit 27 in the Interference is.

Q. Were you told by anyone that Larson had used some drawings in the Interference and that he had misdated or placed dates earlier thereon, or, at least, not the true dates?

A. My recollection is—I am trying to state it as accurately as I can, Mr. Freeman—is that Mr. Alberts told me that he feared that the drawings were falsified and what I say as to originality and date, I am not trying to use the words Mr. Alberts used to me but the conclusions I drew from what he stated to me. Mr. Alberts didn't tell me as a conclusion of his that there were false drawings or that there was perjury.

Q. Did he not tell you that Mr. Larson had confessed his errors in his office—

A. No, he did not.

Q. (Continuing.) —prior to the date you talked to Mr. Larson and Carlsen?

A. No, he did not.

Q. And you never had that information all during the carrying on of these negotiations starting as of November 29th and terminating on or about December 31, 1940?

A. I didn't have that information and I made no 1175 investigation and I stopped Mr. Fidler when he tried to tell me what he knew of the testimony in the Thomasma affidavit.

Q. Mr. Hobbs, do you recall the meeting you had in my office on Wednesday afternoon about 2:30, April 21st—

A. I don't remember—

Q. (Continuing.) —of this year?

A. (Continuing.) —the day or hour, Mr. Freeman. I know I had a conference and at your request I came over to your office to see you and Mr. Alberts and Mr. Ooms.

Q. And do you recall I had put in a call earlier in the day and you were in the Court of Appeals with Mr. Haight?

A. No, I don't recall that but I was in the Court of Appeals on the 21st with Mr. Haight, the 21st of April.

Q. Do you recall my talking to you about Harrison F. Lyman, whom I think was the opposing attorney?

A. That is right.

Q. Do you recall you returned my call? That is, I had called you earlier in the day, and you were gone and I left word for you to call me?

A. I think that is right.

Q. Do you recall talking to me on the telephone?

1176 A. Yes, sir.

Q. And do you recall coming over to my office?

A. Yes, sir.

Q. And do you recall Mr. Ooms and Mr. Alberts and myself in my office?

A. That is right.

Q. Do you recall my asking you with respect to the subject matter of the case herein before this court?

A. We talked about this case.

Q. Do you recall my asking you with respect to perjury?

A. Yes, we talked about perjury.

Q. And, so that the record is clear, do you recall I asked you whether there was any conversation with respect to a bonfire and you denied it then?

A. When you talked to me over the telephone, you said you wanted me to come over to your office to learn what I knew about a bonfire you had been told about.

Q. And you denied that, did you not, at that time?

A. I did.

Q. I just wanted the record straight as to what you and I talked about.

A. I don't think we will have any disagreement about that, Mr. Freeman.

1177 Q. Then do you recall my asking you with respect to perjury?

A. Yes. I wish you would be more specific about what you asked me. Surely, we talked about perjury and the charges of perjury.

Q. And do you recall what you said to me when I asked you as to whether or not you knew there was perjury in this case and whether the other parties, that is AMMCO and its attorneys, knew there was perjury?

A. I think what I told you is that it made no difference

to me as far as my commission in the case was concerned whether there was perjury or not; that it was immaterial to what I was trying to do.

Q. Do you recall stating to me when I asked you whether you knew there was perjury and whether AMMCO and its attorneys knew there was perjury, stating to me, and I now quote:

"Of course, we were all operating on the basis that there was perjury."

Do you recall that?

Mr. Lindsey: What are you quoting from, Mr. Freeman?

Mr. Freeman: From a memorandum I have.

The Witness: A. No, I don't recall that, Mr. Freeman. I think what I told you was that I was perfectly willing to assume that there was perjury or that there was not; that it made no difference to me.

Mr. Freeman: Q. And do you recall saying that, "We all operated on the basis that there was perjury"?

A. No, I don't recall that.

Q. Do you recall me sitting at your left and Mr. Alberts sitting in front of you and Mr. Ooms sitting on your right at the time I made that specific question or stated that specific question to you?

A. We were sitting roughly as you state.

Q. Do you recall my asking you now whether or not you knew there was perjury?

A. I think you did ask me that.

Q. And you now want your answer on the basis that you were operating on the basis that there might have been perjury or there wasn't perjury, is that correct?

Mr. Lindsey: I object to the question.

Mr. Freeman: Q. You tell us what you told me. That is what I want to get at.

The Court: Ask him then.

The Witness: I didn't hear you, Mr. Freeman.

Mr. Freeman: Q. Please tell me now—

1179 The Court: He said we lawyers get into trouble sometimes.

Mr. Freeman: I was speaking for myself only, your Honor.

The Court: I guess the others didn't hear.

He wants you to tell him what happened over at his office.

Mr. Freeman: That is right.

The Court: In connection with this charge of perjury.

The Witness: A. Well, the perjury or the conversation, as near as I can recall it, Mr. Freeman, was you asked me if I knew there was perjury and I told you I did not, that it was immaterial, I deemed it immaterial to what I was trying to do whether there was or was not perjury.

I don't recall I told you that we all assumed that there was perjury. I don't recall telling you that anybody told me that there was.

I recall that I was asked if there was an agreement or understanding for a bonfire and I denied it. I recall that I was asked if I had been threatened, I don't mean personally but my clients through me, by the attorneys 1180 on the other side and that I denied that.

Mr. Freeman: Q. Do you recall just how you denied that? Do you recall what you told me in that connection?

A. I think when we were talking about that I referred to the fact of my dispute with Mr. Lindsey over the telephone.

Q. And that both of the Harrys in this case, Harry Alberts and Harry Lindsey, were a couple of hot-heads?

A. That is right, Mr. Freeman, I used that language that I was trying to settle a case between two hot headed Harrys.

The third thing I remember is, as I remember, Mr. Alberts wanted to concede priority only and I had objected to that because I had said there would still be perjury if we did that and I certainly have no recollection of ever having such discussion with Mr. Alberts because if perjury had been committed, you couldn't wipe it out by any settlement you might make.

Q. Now, you operated on the assumption your client was wrong throughout the negotiations?

A. I operated on the—oh, let me answer your question "yes" and qualify it.

I operated on the assumption my client couldn't
1181 prevail in the interference because he had come into my office and said he wanted to settle.

Q. Didn't you operate on the basis that your client was wrong?

A. I don't want to appear to quibble with you, Mr.

Freeman, but I want to be sure I know what you mean by "wrong."

Q. Well, you wrote to Mr. Fidler on December 6th:

"Rather, our philosophy is based on the assumption everybody is wrong and that the practical thing to do is to make a definite settlement,"

did you not?

A. That is right and I still subscribe to that.

Q. And that included the assumption your client was wrong?

A. And, equally, the assumption that the other side was wrong.

Q. And I now ask you to tell us upon what you based your assumption that your client was wrong?

A. On the statements to me by Mr. Alberts and my client and the willingness of the client to settle. That is as far as your question goes, isn't it?

1182 You didn't ask me about AMMCO.

Mr. Freeman: Thank you. That is all.

The Court: Any redirect examination?

Redirect Examination by Mr. Lindsey.

Q. Mr. Hobbs, at your conference with Mr. Fidler at his home on December 2d, the essence of your proposal or suggestions with respect to settling the matter was as expressed in your letter to Precision of December 4, 1940, Exhibit 63, was it not?

I will read from the letter which you addressed to Precision, attention Mr. Larson:

"We told him,"—

"him" meaning Mr. Fidler.

"—we were willing to concede priority; that we wished an appropriate release of damages and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments."

Now, is that the proposal or suggestion you made to Mr. Fidler on December 2d?

A. That is right.

1183 Q. Then on December 6th, Mr. Fidler wrote to you, his letter of that date, Plaintiff's Exhibit 29. In there he states to you that you had proposed, namely, a settlement by this:

"—namely by Larson conceding priority to Zimmerman

and by payment to Automotive Maintenance Machinery Co. of a sum equal to a certain royalty per wrench for wrenches already made and wrenches on order and to be made in fulfillment of orders already given and further agreement to discontinue the manufacture and sale of the wrench as soon as the orders on hand had been filled."

Now, that was the general suggestion also you had made to Mr. Fidler on December 2d, is it not?

A. I don't think I can answer your question yes or no, Mr. Lindsey. This letter of Mr. Fidler has the statement in it, "further agreement to discontinue the manufacture and sale of wrenches as soon as orders on hand had been fulfilled," and that is not recited in my letter of December 2d.

Q. You mean your letter of December 4th?

A. Letter of December 4th referring to the con-1184 ference of December 2d.

Q. Except you state in your December 4th letter: "—that we wish a license to protect our customers and to permit us to fulfill existing contracts and commitments."

There wasn't any suggestion there for a continued license in your letter of December 4th?

A. The probabilities are that was intended to mean the same thing.

Q. Now, you first proposed in your later letter of December 6th to Mr. Fidler a 3 per cent royalty and AMMCO then suggested a 10 per cent royalty, is that not correct?

A. That is right.

Q. And by virtue of the agreement in question, Precision obtained virtually a license to manufacture six thousand wrenches to fill its orders from Snap-On, isn't that correct?

A. That is correct and if there were other wrenches on order in excess of six thousand, they were included, too.

Q. What was the consideration for that license?

A. Three per cent on—

Q. I mean the license that was actually entered into, Mr. Hobbs.

1185 A. Yes. On wrenches in excess of six thousand, as referred to in the contract, there was to be ten per cent and, as I recall it, without looking at the contract, there was to be no other royalty on a percentage basis but we paid five hundred dollars and assigned the Larson application, and that was the bargaining point between your

demand for ten per cent on everything and our offer to pay three per cent or my suggestion to pay three per cent.

Mr. Lindsey: That is all.

(Witness excused.)

1186 Mr. Lindsey: Mr. Haight, please.

EDWARD A. HAIGHT, called as a witness herein by the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Lindsey.

Q. Please state your full name.

A. Edward A. Haight.

Q. How long have you been associated with Mr. George I. Haight in the firm of Haight, Goldstein and Hobbs in the practice of law, Mr. Haight?

A. It will be nine years this August.

Q. There has been testimony given in this case with respect to a conference which was held at Mr. Fidler's home on December 2, 1940. Were you present?

A. I was.

Q. Who else was present?

A. Mr. Fidler and Mr. Hobbs.

Q. Will you please state to the Court just what was said at that conference?

A. Well, first, for just a minute or two, we discussed Mr. Fidler's back, I believe it was. He was on a day 1187 bed in his den in his house, and we said something about his new home, it was relatively new and attractive, and then we talked about settling the Interference.

Mr. Fidler opened the conversation on that, as I recall it, after Mr. Hobbs had said that he knew generally the facts in connection with it. Mr. Fidler said that he could give him more details and he started to tell us about an affidavit he had, or a statement he had, that would indicate that a drawing or drawings introduced by our client in the Interference had been faked, and Mr. Hobbs told him that he didn't think it was necessary to go into those facts, that we were there to discuss settlement of the case and there was no need to re-try it or continue the trial.

Mr. Hobbs said that, further, it wouldn't be necessary because we were going on the basis that we would concede

priority but that we wanted a license or release for what we had manufactured, or he also told Mr. Fidler that we had some orders that were unfulfilled, we have a contract with Snap-On, and that we wanted to fulfil them, and we discussed generally that matter and, I as I recall it, Mr. Fidler said that he thought generally such a settle-
1188 ment could be effected, but that they would want to have a royalty payment or some payment as royalty. We didn't discuss any specific figures, as I recall it.

Mr. Hobbs said he thought that some arrangement could be made and should be made for royalties, but, as I recall, there was no definite statement on what they were to be or the basis of them, and I think that was all, except Mr. Hobbs, I believe, raised the question as to whether or not it would be necessary for our client or Mr. Alberts' client to pay to have some untranscribed testimony typed up, and Mr. Fidler said that, no, if we settled the case obviously it wouldn't be necessary for us to go to that expense.

We were out there for an hour or so. It was in an afternoon.

Q. Now, after this conference of December 2nd, did you have any further discussion about this matter with Mr. Hobbs alone?

A. I did. I had a number of conferences lasting from, maybe, two minutes to five or ten minutes with Mr. Hobbs from time to time.

Q. Did you have any discussion with Mr. Hobbs as to Thomasma's relationship with Precision at the same time Thomasma was an employee of Automotive?

1189 A. Yes.

Q. And what was said in that regard?

A. Sometime after there was a draft of a settlement agreement, and I don't recall specifically when that was, but I remember that Hobbs and I were going over a draft in which there was a release, and I remember saying to Hobbs that I thought the terms of the release in the settlement agreement were broad enough to cover any possible liability of Precision to Fidler's client for having—if it was the fact that they had—made and sold devices, the design for which they had gotten from a confidential employee or an employee in a confidential relationship. And we checked that and then I remember saying to Hobbs that I thought the release was broad enough. The only possible question that I could see that Automotive might raise

would be on whether or not they had full knowledge of all the facts, and I remember saying to Hobbs that we didn't have a copy in our file of the Thomasma affidavit or any other information that Mr. Fidler had, and that, in fact, in our office file, we did not have the testimony in the Interference. We had very little information. So that, as distinguished from the usual case where you get a re-
1190 lease and your file will show what is known by you and by the other side generally, our file would be quite barren, and so I suggested to Hobbs that perhaps we should get a copy of the Thomasma affidavit, and Hobbs said that he didn't think that we need to worry with your office; that there would never be any denial by you that you had such knowledge as you in fact had, and then we talked about it and Hobbs said that he would speak to Mr. Fidler, and that he was sure that even if you no longer represented Autonotive, if any question were ever raised, that Mr. Fidler would agree that he would always have his file available so that we could consider, where our file was deficient, that we in effect had the information because we could get it from you.

There was one other conversation on Thomasma, and that had to do with his stock. I remember that I was opposed to pressing Mr. Fidler to get the stock back. I thought we might do it some other way, but Hobbs disagreed and said we could get it from you people at the same time that the settlement was made.

Q. Aside from this conference of December 2, 1940, did you ever have any further conference with either Mr. Fidler or myself or any representative of Autonotive?

1191 A. No.

Q. Did you attend any conferences that Mr. Hobbs had with Mr. Larson or Mr. Carlsen or both of them?

A. Yes.

Q. Do you recall when one of those conferences took place?

A. Well, I recall one conference with Mr. Larson and Mr. Hobbs and I. That, on checking my time sheets I find was on December 11th. My time sheet doesn't show it, but I recall just stepping into the room when Mr. Larson and someone else were discussing with Hobbs at the time that they signed the contracts, and in checking

through Mr. Hobbs' time sheets I know that that must have been on December 24th.

Q. What was said on December 11th at this conference at which were present you and Mr. Hobbs and Mr. Larson? Do you remember the principal things that were discussed?

A. Well, the conference was taken up largely with talking about what we wanted to get in the settlement and what Precision's business was. I remember that we discussed the question of how many orders there were yet unfilled and, as I recall it, we discussed the income from those. I couldn't say definitely what it would be, 1192 but I have an idea that, as I recall it, it was some substantial sum, something like $35,000 or so, that was to be paid to Precision. That wasn't its net profit. It seems to me its gross was something like that, and they would make some profit on that, and we discussed the importance of getting a release or a license to permit them to continue with those sales. We also discussed the Thomasma stock a bit.

I think it was at that time or slightly after that—must have been just before it—that I talked with Hobbs about that Thomasma stock, but I recall we discussed that.

Q. Did you ever hear a discussion about any other wrench?

A. Yes, that was mentioned at that conference, but I think that not a great deal was said about that. I do recall the fact that they had a new wrench or were particularly interested, so far as the wrench they were then selling was concerned, merely in fulfilling their existing orders.

Q. At the conference which you attended in Mr. Fidler's home on December 2, 1940, or at any other conferences which you had with Mr. Hobbs either alone or when Mr. Larson or Mr. Carlsen may have been there, what 1193 threats of prosecution for perjury or statements that perjury had been committed were made by anyone?

A. Well, no threats of prosecution were made at any of those conferences. I don't recall Mr. Hobbs ever using the exact word "perjury". I do recall that before we went out to see Mr. Fidler. Hobbs told me that he had talked with Alberts and, as I recall it, he told me that Alberts said he thought a document had been faked. I heard Mr. Hobbs testify this morning? His account of the Alberts conversation with him is no doubt more accurate, but my

recollection is that Hobbs told me that Alberts told him that he, Alberts, thought a document had been faked.

Q. At any of these conferences that you have mentioned, was there any suggestion or intimation or statement with respect to a bonfire or disposing of any testimony or doing away with any of the records?

A. No.

Mr. Lindsey: That is all.

Cross-Examination by Mr. Goms.

Q. Mr. Haight, you weren't in the conferences and negotiations, right in the middle of them, you were more
1194 or less on the edge, were you not?

A. That is correct.

Q. And you didn't sit in on all the conferences that were had between, respectively, Mr. Hobbs and his clients, and Mr. Hobbs and Mr. Alberts, and, respectively, Mr. Hobbs and Mr. Fidler and Mr. Lindsey?

A. No.

Q. Were you ever in any conference with Mr. Hobbs and Mr. Alberts?

A. No, sir.

Q. Were you ever in any conference with Mr. Hobbs and Mr. Fidler and Mr. Lindsey, or either of them?

A. I was in one conference with Mr. Fidler and Mr. Hobbs. I was never in any conference with Mr. Lindsey.

Q. Do you recall when that was?

A. The one with Mr. Fidler?

Q. Yes.

A. That was out at his home?

Q. But not at the office?

A. No, sir.

Q. When you went out to Mr. Fidler's home on Monday afternoon, December 2nd, what did you know of this case?

A. Well, I knew what Hobbs told me when he
1195 asked me to go out, and what he had told me on the Elevated, riding out there, and in the cab from Davis Street over to Mr. Fidler's home.

He told me of his 'phone call from Alberts, and then the conference with Mr. Larson and Mr. Carlsen following that. He told me that—do you want me to just recite it as

I get it? It is substantially as he testified to this morning, but I don't recall the details.

Q. Let me have your version of what you knew when you sat there at Mr. Fidler's bedside? What did Mr. Hobbs tell you about the Interference?

A. Mr. Hobbs told me there had been an Interference that was then pending, that in the course of the Interference Larson had offered a drawing or drawings, that Alberts called him and said that he had talked with Mr. Fidler and Fidler had a statement of a witness or prospective witness which caused Alberts to believe that a document or documents was faked; that Alberts had told him that it was necessary, he thought, to get another lawyer in to represent Larson because Alberts represented another party in the Interference and there might be adverse interests; that Precision was selling these wrenches, that it was important to them to fulfill their existing obli-
1196 gations to Alberts' client.

And then we discussed the question of how to approach Mr. Fidler. It was pretty much a horse-trading proposition, how we should go about it. He also told me about the fact that all the testimony was not yet transcribed because I remember I was to remind him if he failed to bring that question up.

Q. You knew at that time he had not read any of the Interference testimony, did you not?

A. Yes.

Q. Was any explanation made of that to you as to why he had not read it?

A. Not that I recall.

Q. Had you seen his letter of November 29th to Mr. Fidler?

A. No, I don't think so. I don't remember having seen it.

Q. You say you hadn't seen that letter?

A. No.

Q. But you were going out there on the assumption that the Interference was all over, that you were going to concede priority?

A. Yes.

Q. And that was based on the fact that that draw-
1197 ing was faked?

A. No, I don't think that is quite an accurate statement of it.

Q. Well, were you going to dispute at all with Mr. Fidler the statements he had made to Mr. Alberts about the faked testimony in the Interference?

A. No, I recall that. Mr. Hobbs and I, going out there, on the way out, we discussed that, and we decided as a matter of tactics it was better to tell Mr. Fidler we didn't propose to discuss that.

Q. Why was that better as a matter of tactics?

A. Well, I thought it was better because, to my mind, if Mr. Alberts, who had put in these documents thought there was some question about their genuineness, why, I was quite sure that the opposition would think there was plenty of question about it. If that was so, we would be dealing with Mr. Fidler on one of his strong points, the question of his succeeding in the Interference, and that would no doubt be one of his strong points in the settlement.

Q. You threw away any argument you had about what was in the Interference when you walked into that room, didn't you?

1498 A. Yes, we did.

Q. And you stated Mr. Hobbs opened the conversation by relating to Mr. Fidler the facts. What did he tell him?

A. If I said that I was in error. What Mr. Hobbs did do was to tell Mr. Fidler that he, Hobbs knew generally the facts.

Q. And then Mr. Fidler replied with something. What did Mr. Fidler say?

A. Well, I don't remember exactly his language, but when Hobbs said he knew generally, why, Mr. Fidler suggested that maybe he had better know a little bit more in detail, or something of that kind, about some of the facts, and so he proposed to tell us something about the Thomasma affidavit.

Q. Well, he didn't say, "I propose to tell you about the Thomasma affidavit." He said something about the Thomasma affidavit, didn't he?

A. Yes.

Q. What did he say about it?

A. Well, he said that he thought that perhaps Hobbs should know a few more of the facts and a little more of the detail about this statement or affidavit that he had,

and he said that he had gotten it from a man who
1198½ was an employee or had formerly been an employee
—I don't know exactly how far he got, but he no sooner started than Hobbs told him he didn't think it was necessary.

Q. He had his papers there, did he not?

A. As I recall it, he did.

Q. Did he show you the Thomasma affidavit?

A. No, not in the sense of pointing it out line for line. As I recall it, he had some papers in his lap or in his hand, but we were not shown them in the sense of being given them to examine. He may have offered to let us see them.

Q. He told you what he had there?

A. As I recall it, yes.

Q. Didn't he have a photograph of a faked drawing there also?

A. No, I don't recall seeing any drawing or photograph or photostat of a drawing.

Q. Was there any discussion of that faked drawing?

A. No, except as in his first remarks, as I recall it, Mr. Fidler didn't even get a chance to tell us anything much about the drawings or the affidavit.

Q. What did Mr. Hobbs say in cutting him off?

A. Well, in substance Mr. Hobbs said, "I do not
1199 think it will be necessary for you to go into that, or for you to discuss that. After all, we are here to try to settle the Interference and at the outlet I will say that one thing that we are willing to do is concede priority in the course of a settlement, and if we do that I don't think it is material what the evidence has been to date."

Q. Did Mr. Fidler acquiesce in that?

A. Yes, he said, "Well, all right then, we can discuss settlement."

Q. He didn't press the story upon you at all of what he had?

A. No, I don't think he was as anxious to drop it as Mr. Hobbs and I were.

Q. As a matter of fact, to use a colloquialism, he had you over a barrel on that issue, didn't he?

A. Well, I strongly suspected he did.

Q. You say there was some conversation there about the untranscribed portion of the record. What was said about that?

A. The only thing said on that was that Hobbs wanted

to get permission not to have it transcribed so as to save our client the money, and Mr. Fidler said that that would be all right, that it wouldn't be necessary if we settled
1200 it, or something of that kind.

Q. And you know that the transcription was interrupted at about that date?

Mr. Lindsey: What do you mean by that?

The Witness: I understood it was.

Mr. Ooms: Q. That somebody gave the Reporter instructions not to transcribe anything further?

A. Yes. My recollection is that Hobbs wrote or called Alberts and told him it wouldn't be necessary. I am not sure on that.

Q. You stated that later Mr. Hobbs and you had a discussion about the stock which Thomasma had in Precision. Do you recall when that was?

A. I remember that something was said about that in Larson's presence. That would be on December 11th, and I remember also that Hobbs and I talked a bit about that, but I do not recall whether that was just prior to or just after December 11th. It may have been that it was a good deal earlier, because I remember that I was a little hesitant about asking for too much from Mr. Fidler and Mr. Lindsey.

Q. Did you know why Mr. Hobbs was asking for the stock at all?

1201 A. Well, I was told by him that Thomasma had some stock. I don't remember now that Hobbs explained in detail how he had gotten it, but that Larson wanted it back. I was told that both by Larson and Mr. Hobbs.

Q. Did you know then that Mr. Hobbs had written a demand to Mr. Thomasma on December 6th demanding that he return the stock because it was unlawfully held by him?

A. He did write on the 6th, did he?

Q. Yes.

A. Well, then it was probably prior to that time that I talked with Hobbs about it, because I recall discussing with Hobbs how we should go about it, and probably that was just prior to the time that letter was written.

Q. And you told him, as I recall your direct testimony, not to ask Mr. Fidler for the stock, or you suggested that he shouldn't?

A. Well, I thought we were going to try to get too

much. It struck me, if we could get the license, to fulfill existing orders, we would be getting the most important thing, and I thought we shouldn't try to bargain for too much. I thought it was more important to try to clinch the first thing and then take care of the stock some other way.

1202 Q. How could you determine what was too much in the circumstances when all you were committed to do was to settle the Interference?

A. Well, that was just a straight horse trading proposition.

Q. When you horse trade you get as much as you can, don't you?

A. Yes.

Q. But you were against asking for the stock because that might be asking for too much?

A. That is right.

Q. Did you know why there was any right to ask for the stock at all?

A. No, I don't recall any of the details on that.

Q. You did know that Thomasma had been an employee of Automotive, the Plaintiff here?

A. Yes, I recall that.

Q. And you did have some discussion with Mr. Hobbs about the possible implication of his change of employment and possible liability for confidential disclosure?

A. Yes.

Q. What brought that on?

A. Well, as I recall it, we discussed a little bit
1203 about Thomasma. When I first talked with Hobbs about the case, that was, but there wasn't any great talk on that at that time. It was after some draft of agreement had been made and Hobbs and I were going over a draft that we discussed in any detail the possible liability.

Q. Do you recall when you saw that draft of agreement?

A. No, I don't.

Q. Do you recall that there was an agreement with a provision for release in it?

A. Yes, I remember that.

Q. I hand you a draft of an agreement which is in evidence as Defendants' Exhibit No. 14, and ask you whether you have previously seen that document?

A. I can't identify it. If this is the agreement that

was entered at that time, why, then I know I have seen it, but I don't recall it from just looking at it.

Q. Do you recall examining a release provision in one of these submitted drafts?

A. Yes, I do.

Q. Would you read paragraph 8 of this agreement and read it aloud please?

A. "AMMCO, in consideration of the performance of all the foregoing by Snap-On, Precision and Larson,
1204 and each of them, does hereby release and forever discharge Snap-On and Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO has or may have had against them, jointly and severally, prior to the date hereof, on account of said Interference No. 77,565 and also on account of development of, dealing in, manufacture, use and or sale of torque measuring wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in Paragraphs 3 and 4 hereof and not yet delivered to Snap-On or disposed of by Snap-On."

Q. Do you recall whether that was the release provision in the draft which you examined?

A. No, I don't recall the details of it.

Q. But you did have a discussion with Mr. Hobbs about getting some protection of his clients against a possible claim for a confidential disclosure?

A. That is right.

1205 Q. Do you recall whether you discussed with him whether or not that particular release clause would embrace such a claim?

A. Yes. There wasn't much discussion. I remember reading it and telling him I thought it did cover it, and he agreed with that.

Q. Had anybody made any claim of possible civil liability against your clients for either a breach of confidential disclosure or any other civil trespass?

A. Not that I recall. I know that Mr. Fidler didn't when we were out there on December 2nd.

Q. He didn't mention, when you were out there, a possible claim for conspiracy against Snap-On, Larson and Precision?

A. No, not that I recall.

Q. And what did you know of the facts which might give rise to a contemplated claim of breach of confidential disclosure?

A. By "know", what had I been informed?

Q. Yes.

A. It was hearsay of about the fourth degree.

Q. Well, a lot of what we had gone into is hearsay.

A. Well, I was told that the witness who had given
1206 the affidavit to Fidler had been an employee of Fidler's client, and that he had given some information to Larson, according to his statement, and that Larson had used that in developing or in selling his wrench.

Q. Who had told you that?

A. Mr. Hobbs.

Q. That release clause which you have in your hand in Defendants' Exhibit 14, was broad enough to embrace any claim based on those facts, wasn't it?

A. Oh, yes.

Q. Did you know that that man, Thomasma, who might have been the basis for an action of that character was also the man that had the stock which you discussed?

A. Yes.

Q. Did you know that he had procured or had been given that stock for his contribution to Precision?

A. Well, I may have been told that, but I don't recall it now. I probably was. That probably was the reason that Hobbs thought this was an appropriate time to take it up, though I really don't know.

Q. Would you relate to us as nearly as you can the conversation you had with Mr. Hobbs about securing in the hands of the attorneys for the Plaintiff the possession
1207 of the testimony and the Thomasma affidavit which you talked about in your direct testimony?

A. Well, Hobbs and I had just discussed either this release clause in Paragraph 8 of Snap-On Exhibit 14, or some other release clause, and we had agreed that it was broad enough to cover any claim for use of information of a confidential nature secured from an employee of Automotive, and I then said to Hobbs that I thought that release was broad enough, and that I didn't see any possible catch, except that if Automotive could deny that they had knowledge of the facts, such as they were, and we didn't know definitely ourselves what the facts were, but if Automotive

could be in position to deny that they knew of them, then they might get around this release, partly because of the fact that it was so broad, on the ground that they hadn't intended to release any such cause of action, and so I said to Hobbs that I thought it might be well for us to get for our file a copy of this statement that Fidler had and, as I recall it, I told him that if Fidler sent us a letter telling us he was sending a copy of it, then we would have in our file sufficient so that Automotive couldn't ever get out of this release on that ground, and Hobbs told me, well, I
1208 didn't need to worry about that, that, he said, Fidler wouldn't do that, or that your office wouldn't do that, and I told him that that might be as to that office, but we didn't know that they would always represent the other side, and Hobbs said, "Well, I am sure that Fidler will either give me the information, that is, a copy of the statement, and a letter, or, as a matter of fact, they will always let us look at their file anyway if something comes up and they no longer represent Automotive."

Q. You knew as a matter of fact that the Thomasma affidavit contained those facts which you are now discussing or upon which you assumed there might be a claim or civil damages?

A. Yes, I was told that was part of what was in the Thomasma affidavit.

Q. Do you know, as an attorney-at-law, even if they were mistaken as to the facts, it wouldn't affect the validity of the release?

A. No, I don't know that. As I understand a release, Mr. Ooms, it is a question of intent. You and I can execute mutual releases intending to release whatever causes of action we might have against each other, known or unknown. Such a release, if that is our intent and it
1209 is shown, would be valid.

Of course, there are cases in which the parties have used the general language of release in order to settle a specific controversy, and it has been held, even though they are in very broad and general terms, they apply only to the specific situation. So that I always consider it important, in getting a release, to have something in the file to show what it is that we had an argument about prior to the execution of the release so we are sure that is released.

Q. Do you recall it released "claims of any name or nature"?

A. Yes. Even if it is a broad release, it isn't any good if it goes beyond what the parties knew or intended to release.

Q. As an attorney-at-law it would be your opinion, if they didn't have that information at the time of that release, you would be of the opinion they might subsequently attack the release?

A. Well, there might be a possibility of it, yes.

Q. And you knew at that time, did you not, that Mr. Hobbs was dickering with Mr. Fidler to get back Thomasma's stock?

1210 A. That is right.

Q. And you knew that Thomasma, the stockholder, was Thomasma the go-between in that confidential disclosure made?

A. That is right.

Q. In that meeting of December 11th, I think you met Mr. Larson and Mr. Carlsen in Hobbs' office?

A. No. Carlsen wasn't there. I didn't meet Carlsen, and I assume it was Carlsen—I don't remember his name—until the day that they signed the contracts. I met just Larson on the 11th.

Q. Were you there when he came to the office?

A. I don't recall the details of that. As I recall it, on the 11th he was already in Mr. Hobbs' office setting in the big chair in the northeast corner of it and I came in and was introduced and sat down right in front of Mr. Hobbs' desk.

Q. Mr. Hobbs said, "I would like to have Mr. Haight sit in here because two minds are better than one," didn't he?

A. He may have said that. I don't recall.

Q. Did you remain throughout the remainder of the conference?

1211 A. As I recall it, I did.

Q. Did you have any drafts or proposed agreements before you at that time?

A. No, not that I recall.

Q. What was the status of the negotiations?

A. Well, I may be wrong. You will know better than I, perhaps, but my recollection is at that conference we were talking about what we wanted, and we didn't at that time have on paper any proposed contract or settlement.

that we had drawn, or we didn't yet have any that had been submitted by Mr. Fidler.

Q. And the next time you sat in any conference with Mr. Hobbs and his clients was on either December 23rd or 24th when the agreements were signed?

A. That is right. Technically, your question was "sat in". I just walked in and I don't think I even sat down. I just remember walking in and meeting the other man besides Mr. Larson. I probably was not in Mr. Hobbs' office more than two minutes.

Q. You didn't remain there throughout the conference?

A. Oh, no.

Q. I think you said there was some discussion of the value of the unfilled orders?

1212 A. That was on December 11th.

Q. On December 11th?

A. Yes.

Q. And you said at one of those meetings the stock was also discussed. Was that the December 11th or the December 23rd meeting?

A. No, December 11th.

Q. Do you recall what Larson said about that stock at that time?

A. No, except he wanted it back. I don't recall any other conversation.

Q. Did you know that Mr. Hobbs had the week previously asked Mr. Fidler to assist in recovering that stock?

A. Well, I had forgotten that he had already asked the week previously. I do remember that we mentioned it, and I know that he did ask Fidler for it.

Q. You say at that same meeting they discussed the new wrench. What was said?

A. All I recall about that was the important thing from the standpoint of a license or release was to be able to fulfill their then order because Larson and Hobbs discussed it. As I recall it, Hobbs asked him how long it would take him to get his new wrench in production, 1213 or something of that kind, and they had apparently discussed that in some prior conference and, as I recall it, Larson said he could get it in production before he finished selling this 6,000 or so to Snap-On.

Q. You didn't see any wrench at that time?

A. Oh, no.

Q. Were they talking about a wrench that had been developed or one he was working on or might develop?

A. My recollection was that it was one that he had developed but he hadn't yet started to produce it.

Mr. Ooms: That is all.

Mr. Lindsey: That is all.

(Witness Excused.)

Mr. Ooms: I would like to offer in evidence as Defendants' Exhibit 102 the letter of December 6th, 1940, sent by Mr. Hobbs to Mr. George Thomasma.

The Court: If there is no objection it may be admitted.

Mr. Lindsey: No objection.

(Said document was thereupon received in evidence by the Court and was marked as DEFENDANTS' EXHIBIT NO. 102.)

1214 Mr. Fidler: Mr. Salmon.

RUDOLPH B. SALMON, a witness called by the plaintiff, having been first duly sworn, was examined and testified as follows:

1215 *Direct Examination by Mr. Fidler.*

Q. Please state your name.

A. Rudolph B. Salmon.

Q. And you are a handwriting expert?

A. Yes, sir.

Q. Do you recollect that I consulted with you in your capacity as a handwriting expert about November, 1940?

A. Yes, sir.

Q. Do you have any record by which you can refresh your recollection as to the exact time that I first consulted you in that month, November, 1940?

A. Yes, sir.

Q. When was that?

A. November 22, 1940.

Q. Now, will you please tell the Court just what transpired at that time that I consulted you, on November 22, 1940?

A. I can tell you the gist of the conversation; I cannot tell you the words that were used. You came into my office, and you had with you two documents. One was a drawing on thin, semi-transparent paper, and the other,

was a photostatic copy of another drawing. You
1216 spoke to me generally about handwriting, writings in general, whether I could determine whether the same or different persons had made these drawings. We talked generally about handwriting, and the methods by which we arrived at an opinion.

And you told me something about the matter in which these writings were involved. I don't remember the details. And then after our discussion I suggested to you, if possible, to get me some additional known standards for comparison. I also asked you to bring me, or let me make an enlargement of the photostat which you had in your possession at the time.

Q. Did I furnish you with the additional information that you had requested?

A. Not at that time. Several days later,— to be exact, on the 25th of November you sent over to me a full size, a large size photograph of the drawing of which you had originally brought in a small one. And I made an examination and comparison—

At that first hearing, I might add this; that you asked me how long it would take to arrive at an opinion, and I told you I didn't know, it would take some considerable work; it was just detailed work, and I might arrive
1217 at an opinion quickly, or it might take me a longer time.

And then I made examinations on the 25th; and I also made further examinations, and made notations during my examination on the 26th. On the 27th of November I came to your office in response to a phone call, to the effect that you had some additional drawings. I got there along about, oh, I would say 4:30 or 5:00 o'clock; and I made further examination at that time. And I stated at that time that I would still have to work on this,—the light was bad, and I wanted to do it at my leisure.

And at that time I left with you the exhibits which I had; there were the two drawings, and I also had with me the notes or memoranda which I had been working on. I asked to be permitted to take those, and you told me that you needed them the following day, and when you got through you would send that over.

Q. Now I hand you three documents; I would like you to examine them, state whether or not you know what they are; and if so, please so state.

A. It is my recollection that these documents, this photostatic enlargement is either the enlargement which I had or one similar to it. I had this thin, trans-
1218 parent sheet, and this is my memorandum, made during my examination.

Q. The yellow sheet you have just referred to?

A. That yellow sheet.

Mr. Fidler: At this time I wish to offer in evidence the enlargements of Larson Exhibit 27, drawing, Interference drawing, as Plaintiff's Exhibit 56; and the transparent drawing as Plaintiff's Exhibit 57; and the yellow sheet as Plaintiff's Exhibit 58.

The Court: No objection; they will be admitted.

(Said enlarged Interference drawing, said thin, transparent drawing, and said yellow sheet, so offered and received in evidence were marked respectively PLAINTIFF'S EXHIBITS 56, 57 and 58.)

Mr. Fidler: Q. Mr. Salmon, did you at any time during my conference with you, render to me an opinion in respect to these drawings?

The Witness: A. No, I had not yet arrived at an opinion, and I did not. I did say this: There were enough similarities to warrant an examination.

Q. Did you at any time that I consulted with you, give me any information or any opinion which would en-
1219 able you to take the witness stand in court and testify in respect to the matter?

A. Oh, no; I had not yet made up my own mind, and I could not testify unless I had.

Q. Now I hand you another document which purports to be a bill rendered by you, and ask you to examine the same and explain that to the court; and particularly with respect to the statement as to opinion mentioned therein.

A. This is a stock expression which I generally use, to examination, comparison and opinion of the drawings. I usually dictate it to the girl and tell her write up a bill and make a charge of so much; and she usually follows her own discretion, if I have not told her specifically what to put in there.

Q. Did you give me any opinion of any kind, other than what you have testified here; I am speaking now in respect to the material that I furnished you in November, 1940.

A. No, I had not and have not.

Q. And this bill that you just referred to was one rendered by you?

A. Yes, after I had—I called up to ask you to send me back those exhibits for further examination. And they informed me at your office that you were ill. About several weeks later; to be exact, on the 13th of December, I contacted somebody; I thought it was you; and they told me the case was settled. And then I rendered my bill, I think it was either the day after or a short time after.

Mr. Fidler: I wish to offer at this time, your Honor, the bill identified by the witness, as Plaintiff's Exhibit— it is DEFENDANTS' EXHIBIT 52.

The Court: You offered it?

Mr. Freeman: Yes, sir.

Mr. Fidler: That is all of my direct examination.

Cross-Examination by Mr. Ooms.

Q. Mr. Salmon, your bill to the firm of Davis, Lindsey, Smith & Shonts, Defendants' Exhibit 52, is an invoice for the work that you did in this case, isn't it?

A. Well, I suppose; I don't figure it as an invoice. Generally, when I send a bill it is a comprehensive bill, without a detailed statement of exactly what was done. Because I do not ordinarily keep a record of hours and minutes of time worked.

Q. Does that envelope contain any record of what you did?

1221 A. Only in general.

Q. Will you read it to us?

A. Yes; it is headed Zimmerman vs. Larson, Case No. 721; on the document, a drawing of a patented tool. And then I have the name of the person who hired me, Davis, Lindsey, Smith & Shonts, Mr. Fidler, and the phone number. Then I have the date, which the date says November 22, Fidler in for conference with the exhibits. 11 25 Fidler sent full size photostat drawing, and I mentioned a comparison; and 11 26, further examination, and made notations. 11 27 went to Fidler's office with exhibits and saw in there the markings of the sizes one-half unlike; 12 13, phoned Fidler, case settled; 12 27 sent bill; 12 30, received check for $50.00. And then I have a notation: May 3, 1943, Ooms and Freeman came in, and I told them

that I had made an examination, I have given no definite opinion, was not through with my examination at the time the case was settled.

Q. Between the time that you finished with everything shown on this envelope and Mr. Freeman and I called on you, Mr. Fidler and Mr. Hibben and talked with you?

A. Yes, after that about a week.

Q. That was not noted on there?

1222 A. No, because that was not part of the case.

Q. Were we part of the case?

A. Yes; I expected when you and Mr. Freeman came over it was for the purpose of examining me, and I made a notation.

Q. What dates were the other people in?

A. About a week before; I didn't make an entry of it.

Q. In your invoice, Defendants' Exhibit 52, you say in the legend, I assume, describing the work you did, your examination?

A. Yes.

Q. You did make an examination of three documents?

A. Yes.

Q. Comparison?

A. Yes.

Q. You did make a comparison of three documents?

A. Yes.

Q. An opinion of drawings?

A. Yes.

Q. You did render no opinion of these drawings?

A. No, I did not.

Q. In re Zimmerman vs. Larson?

1223 A. Other than the fact that I said they warrant an examination, because there are some similarities.

Q. And that is the most you said, they warranted examination?

A. That is the most I said; I never gave an opinion, because I never reached one.

Q. Does your envelope show the amount of time you put in on this?

A. No, other than dates.

Q. Now, the first time that Mr. Fidler saw you was on November 22, was it not?

A. That is right.

Q. And at that time he brought to you the question of documents, in the form of a reduced photostat, which is

not here; and he brought to you a so-called standard of comparison, which he has put in evidence as Plaintiff's Exhibit 58; is that correct?

A. That is right.

Q. Did you discuss with Mr. Fidler at that time the principles employed in determining the authorship of a questioned document?

A. In a general way, I think I did; I do not recall exactly.

1224 Q. What did you tell him?

A. I do not recall exactly; but I told you the gist of it.

Q. Will you tell us that?

A. Yes. I explained to him that drawings were a little bit different than writings, they required a lot of detail work, that you could not make snap judgment in most cases; that it would take considerable time to arrive at an opinion, if I could arrive at an opinion. And that is briefly what I told him. We talked generally, Mr. Fidler told me some few facts about the case; but frankly, I was not interested, and I do not remember what they were, other than these few facts: He said there were three concerns involved in this thing, and a couple of men; one was on the west side and one was on the north side, and his client; I don't know who they were. The names did not impress themselves on me.

He said that he had some testimony, or there was some affidavits or statements made, and he was in a quandry; the same person had told two stories, and he said, "I want to know what I am up against in this, because I don't want to be caught with my pants down." That was his expression. And then he told me there was an allegation

1225 that this questioned drawing was made by a high school boy; he had had some experience in mechanical drawing, and I told him it does not look to me like a school boy's job.

Q. You were pretty positive about that.

A. Well, it was just a general impression; no, I was not positive about anything in this case, until I had fully completed my examination and made up my mind as to what the facts were.

Q. Did you take mechanical drawing in high school?

A. Yes, I did.

Q. Didn't you tell me that you had taken mechanical drawing, and this was not a high school boy's drawing?

A. I didn't say it was not; I wouldn't make a statement.

Q. Did you tell me, did you tell him the method used in making an examination of documents of this character?

A. I think I did; I wouldn't be positive.

Q. They are practically the same as you use in determining the authorship of any disputed document?

A. Except that in writing you have some other elements than you have in the drawing.

Q. You have more figures to go on?

A. No, you have fewer in the drawing; but you have a care in drawings that you do not have in normal writings.

Q. And basically, the whole problem of examining a disputed document, where you are attempting to determine authorship, is to take the two documents and find individual characteristics on certain letters and figures?

A. That is right.

Q. And if you find in the two documents that there are so many individual characteristics appears in both, on the same letters and figures to be explained by coincidents, that establishes authorship?

A. Ordinarily.

Q. And in this case you made a tabulation, did you not, of the figures that were similar and characteristic in the two drawings?

A. Yes; that is, I found the characteristics which the same characters and same numbers and the same letters which appear upon both drawings.

Q. And appeared in characteristically individual characters?

A. Not necessarily.

Q. Well, I have your sheet here, you, work sheet?

A. That is right.

1227 Q. Which is, I think, offered by the plaintiff as Plaintiff's Exhibit 58, but previously offered by the defendants as Defendants' Exhibit 12. I ask you to look at that for a moment, Mr. Salmon; you find at least a dozen characteristic figures that are common in those two drawings, did you not?

A. You mean the same letters and the same figures?

Q. Yes, and in characteristic formations individually.

A. Not necessarily; this merely shows their locations.

Q. Well, now, will you look at the first one?

A. Yes.

Q. You have the word drill; and in the standard of comparison I think you indicate that that is at the top of the sheet; and in the questioned document in the lower left; that is correct, is it not?

A. That is right.

Q. And that is what appears on these two documents, do they not?

A. That is what I am telling you, that is what I did; I made a notation of where these letters and words and characters appear upon the sheet.

Q. And that is all that that tabulation is?

A. That, together with my general workings; there
1228 isn't anything particular about it; there are some similarities, there are some instances—

Q. Except for the No. 3 which is down about the middle of the sheet?

A. That is right.

Q. Where you have no note in the right column?

A. That is right.

Q. And the number 6, a little farther, where you have no note in the right column?

A. That is right.

Q. And down below the last column, 9/16th, and that is merely your way of writing the fraction throughout; all the other figures in there—and I ask you to examine the documents before you answer—show a characteristic individual formation in both documents; and you have so indicated it on that tabulation.

Mr. Smith: If your Honor please, the question is double barreled; and we object to it for that reason. It is not a question of whether or not there are characteristics common to both these documents; the only question before your Honor is what did this statement of Mr. Fidler—and what
1229 opinion, if any, did he give to him. That is the only question on which this witness is presented to your Honor, or to this Court for examination. That is the only thing covered by his direct examination.

Mr. Ooms: I might say one of the things he delivered to Mr. Fidler was this statement—

The Court: He has already answered this question.

The Witness: I did not deliver this to Mr. Fidler, I might add.

Mr. Ooms: Q. You left it with him the night of November 27th?

A. Only because I was on my way home; and I told Mr. Fidler I would leave the exhibits with him and pick them up the next day, on the way down, his office being between the Illinois Central and my office. At that time I handed them to him and said I will pick them up in the morning. He said I won't be able to give them to you in the morning, because I am going to need them, I am going to need them tomorrow. This was never intended to be in Mr. Fidler's office, because it was a work sheet. I never gave this to Mr. Fidler for any purpose whatsoever; it was left there through inadvertence, or because I happened to be going home.

Q. And it remained there two and one-half years?

1230 A. I was not interested after the case was settled; if I had any further work to do, I would have surely got it back.

Q. Did you discuss that work sheet with him on the night of November 27th?

A. No, I did not; I did not use a work sheet. I was only there a half hour, or three-quarters of an hour; I was using this other exhibit and comparing that with the questioned document. And the light was bad; it was in a large office. I said I cannot do anything here, let me work on this. In fact, I made a notation on my file that certain of the characters are so much different than my plates that it raised a further question.

Q. Is that on the work sheet?

A. No, it is on my file; I did not use the work sheet at that time.

Q. And you got to his office at what time, on the night of November 27th?

A. It was around 5:00 o'clock.

Q. You called your home that night and told them you would be late for dinner?

A. That is right.

Q. How long did you remain there?

1231 A. I should say I was there until about 6:00.

Q. You live near the I. C. Railroad, do you not?

A. Yes; I go south.

Q. And you called your home and said you would be late for dinner?

A. That is right.

Q. And you think you were there from 5:00 to 6:00?

A. Yes; I would not be definite; I know it was not long enough time to make a thorough examination of the documents.

Q. But you had been working on the documents for three days?

A. But I had not on this new one which was in Mr. Fidler's office, which I had not seen before.

Q. And you have not seen it since?

A. I have not seen it since.

Mr. Ooms: I think we are all in agreement that the document cannot be found.

Mr. Fidler: I have made a thorough effort; that was the document of November 27th, which he is now talking about.

Mr. Smith: As a standard of comparison.

Mr. Fidler: Yes.

1232 Mr. Ooms: It is the second standard of comparison.

Mr. Fidler: Yes.

Mr. Ooms: The first one was the one these notes are on.

Mr. Fidler: That is correct.

Mr. Ooms: Q. When you saw Mr. Fidler on November 22nd he told you he wanted an opinion by the following Thursday, for a conference?

The Witness: A. I don't think so; I do not recall he made any specific time.

Q. How much time did he spend with you that time?

A. I would say an hour and a half or two hours; my file shows two hours.

Q. I thought you told me your file didn't show any time.

A. In that particular instance; here is the file, and you may look at it.

Q. I had better; and that is the only indication as to the amount of time in any of those conferences on your work sheet?

A. That is right.

Q. Or on your envelope?

A. That is right.

Q. Now, he promised to you at that time to get 1233 further materials to you on the following Monday?

A. I don't know whether you would call it a

promise; I asked him if he wanted me to have the enlargement of the photostat made, because it was a different size than the other drawings. He said, "No, I will send it to you." I said, "That is all right."—And several days later, on the 25th, he sent it over.

Q. Did you promise him a report before November 28th?

A. I did not promise him a report at any time, that I can recall.

Q. In your conference with him on November 22nd, you went over the two drawings in some detail?

A. No, just casually, looking for something to see whether it warranted an examination or whether it would be worth while.

Q. Didn't you tell him that afternoon there were many items similar which indicated both drawings were made by the same man?

A. I did not put it that way; I said there are enough similarities here to warrant a further and complete examination.

Q. And then you made a further and complete examination on the following Monday, Tuesday, and Wednesday?

1234 A. I don't know what dates they were, but there were several days; I didn't work all day on them. Whenever I had time, I would work on them several hours, perhaps; and then set them aside, and work in the afternoon or the next day. I do not keep any actual record of time worked.

Q. You reached no conclusion as to the authorship of that document, the questioned or disputed document?

A. I had a belief that they might have been written by the same person; and that is why I worked on them. If I thought they were not, I would not have taken up the time, or done it.

Q. Didn't you get any further than a belief you had on the afternoon you examined them?

A. The first time I saw them?

Q. Yes.

A. I just had an idea I would like to examine it further, and I did; that is why I had the enlargements, and that is why I did the work.

Q. What did you tell Mr. Fidler in your most conclusive

report to him as to the authorship of that questioned document?

A. The last time I talked to him was in his office, that evening I was there; and I said, "This complicates
1235 the situation, because it is so much different than the others; I will have to do a lot of checking on it.

Q. The missing drawing complicated the situation?

A. Yes, because certain of the characters and letters—I picked out one-half as typical or markedly different.

Q. You had found some marked resemblance in the earlier statement of comparison?

A. I would not say they were remarkable.

Q. I said marked.

A. There were similarities, yes.

Q. They were the kind of similarities a handwriting expert looks for?

A. Yes.

Q. And they were the kind that if you found sufficient of them you can take the stand and say they were—

A. No, if I arrived at an opinion that the same person wrote them, then I take the stand; until then, I won't.

Q. Will you examine those drawings a moment, Mr. Salmon; you find that the letter "r" in the standard document in the left corner, and in the disputed document in the right center, had a round, individualistic tail on it, the open or final stroke of the letter "r", did you not?

Mr. Smith: Object to that, if your Honor please;
1236 on the ground it is entirely immaterial, as long as he said he did not arrive at any opinion; why, or what comparisons he made, makes no difference. The only question is what did he tell Mr. Fidler.

The Court: Why do you want to go beyond that?

Mr. Ooms: I want to go beyond that because he left this sheet with Mr. Fidler, of course, the document speaks for itself; and I withdraw the question. That is all.

Redirect Examination by Mr. Fidler:

Q. Do you recollect, Mr. Salmon, what you told me in requesting that second drawing, why you wanted it and whether you wanted a drawing of later vintage than the other drawing?

A. I don't remember why I requested it; I know I did

request it. When I was making my examination, primarily, I used this sheet; because various letters and numbers appeared at different places,—I used this sheet for the purpose of locating them, so that when I got into my examination fully I would not have to hunt all the time to find the word drill on one sheet and the word drill on another;

I designated them as being the word drill in the top 1237 center of one sheet, or the lower left hand corner, so when I was made to make my final determination I would have them handy so I could place them in juxtaposition, rather than hunt through the sheet to find two letters or characters of the same number or figure.

Q. Do you recollect telling me that in drawings a man's work may improve over a period of time, that characterizations appear differently?

A. I do not recall it, but I would say that if I spoke about it.

Mr. Fidler: That is all.

Recross Examination by Mr. Ooms.

Q. Just one more thing; in the last line of Defendants' Exhibit 12, you point out the fact that the fractional information is different in the two documents, don't you?

A. Yes.

Q. That was not merely a matter of locating where the fractions occurred?

A. No; in that particular case I showed it definitely, the difference.

Q. And that is the only indication you made there, 1238 that any of the symbols are different in the two sheets?

A. Well, unless you take the three on—the three and the six; if I had nothing to compare with, I would not put it down. I did not find three in the one sheet, and found it on the other; I surely wouldn't have used that as a basis of comparison when I did not have a three on the standard, when I did have it on the questioned.

Mr. Ooms: That is all.

(Witness excused.)

Mr. Smith: Mr. Raftery, please.

THOMAS L. RAFTERY, a witness called by the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. State your name and address, please, Mr. Raftery.
A. Thomas L. Raftery; office address, 10 North Clark Street.
Q. What is your occupation?
A. Court reporter.
Q. Mr. Raftery, were you employed in the matter of taking down Interference testimony in Interference
1239 No. 77565, entitled Larson *vs.* Zimmerman?
A. The Larson *vs.* Zimmenman case, yes.
Q. And who employed you to take the testimony in that case?
A. Mr. Alberts, patent attorney.
Q. That is Mr. Harry C. Alberts?
A. That is right.
Q. Is it your recollection that you started to take the testimony in that case on or about October 24, 1940, and with certain interruptions, continued taking it until on or about November 4, 1940?
A. That is right.
Q. Now, in taking that testimony what means did you use, ordinary notebooks or teletype?
A. Shorthand and ordinary notebooks.
Q. And how many books of testimony in the Larson Interference did you take over that period of time, from October 24 to November 4?
A. Two complete books and parts of two others.
Q. So that we may line them up properly, let us refer to the first one that you took any part of that testimony in as book No. 1; was that a full book or a part of a book?
1240 A. That was just a part of a book.
Q. And what was in the remainder of that book?
A. Other records.
Q. Book No. 2, was that a full book or part of a book?
A. A complete book.
Q. Book No. 3?
A. A complete book of the same case.

Q. Book No. 4?

A. Book No. 4 was a portion, the last part.

Q. The last portion of the testimony which you took, you mean?

A. That is right.

Q. Was that book filled up, the remainder of the book, with testimony in order cases?

A. It was.

Q. Mr. Raftery, I show you what has been entered in evidence in this case as Automotive's Exhibit No. 16, and ask you if you ever saw the original of that letter?

A. I did; I received the original.

Mr. Smith: If your Honor please, so you may follow the testimony, I merely state that this is a letter which Mr. Fidler wrote to Thomas Raftery, and sent copies to Mr. Alberts and Mr. Hobbs and Mr. Wacker, in which the

1241 following was stated: "The parties involved in the above Interference have agreed to settle the same, without further contest. It will not therefore be necessary for you to appear and testify in this matter in response to the subpoena previously served upon you. The subpoena served upon you requests you to produce—", and then a lot of documents are listed.

(Counsel reading further, concluding with the words, "We would appreciate it if you would attend to this immediately.")

Mr. Raftery, prior to your receipt of that letter, had you transcribed some of the testimony which you had taken in the Larson and Zimmerman Interference?

The Witness: A. I had.

Q. And what had you done with the portion of the testimony which you had transcribed?

A. I delivered two copies to Mr. Alberts and one copy to Mr. Fidler, at his office.

Q. Now, at the time that you received this letter of December 26th from Mr. Fidler, what is the fact as to whether there was some testimony remaining untranscribed?

A. There was some left untranscribed.

Q. Now, prior to your receipt of this letter, you

1242 had been served with a subpoena to appear and give testimony in the Larson-Zimmerman Interference; is that correct?

A. That is correct.

Q. Do you know about when you were supposed to appear in response to that subpoena?

A. Well, I was reminded of it when I gave my deposition, as being the 27th of December.

Q. The 27th or the 23rd?

A. The 23rd of December; before Christmas.

Q. Did you appear and give any testimony at any hearing on the Interference?

A. I did not.

Q. In response to that subpoena?

A. In response to that subpoena.

Q. Were you advised not to appear?

A. I was.

Q. Do you recall who so advised you?

A. Somebody from Mr. Fidler's office, who had served me with a subpoena.

Q. Now, after you received the letter of December 26th of Mr. Fidler, what did you do with reference to your notebooks and your transcribed testimony, whatever you had in your hands; what did you do?

1243 A. I delivered it all to Mr. Fidler.

Q. Mr. whom?

A. Or Mr. Alberts, except the two notebooks with portions of the testimony in.

Q. Well, then, do I understand that you delivered what you referred to in our question as book 2 and 3, which are completely filled with Larson Interference testimony?

A. Along with the rest of the transcript.

Q. Along with the rest of the transcript; in other words, at that time you also had in your hands some transcript evidence which had not yet been delivered; is that correct?

A. I believe I had. Maybe I delivered it before that, I don't know; but if I had any left, it was delivered then.

Q. Now, how soon after the receipt of this letter of December 26th did you deliver these notebooks that you refer to, to Mr. Alberts?

A. Within a day or two.

Q. And where did you deliver them to him?

A. To Mr. Alberts' office, in the First National Bank Building.

1244 Q. And who was there on the day you delivered them?

A. Mr. Alberts or his secretary.

Q. No one else?

A. No one else.

Q. Will you tell us what your conversation was with Mr. Alberts at the time that you delivered these notebooks?

A. Well, he told me that the case had been settled, or being discontinued; that he was not going to go any further with it; some of the testimony given by other witnesses proved to him that his client did not give him the exact status of the case, and the exact truth of it.

Q. Now, how many books did you deliver to Mr. Alberts on this day or two after December 26th?

A. Two.

Q. What about the other two books; why didn't you deliver all four books?

A. Because I had other court records in them.

Q. Did you have any conversation with Mr. Alberts at the time you delivered the two books, regarding your failure or refusal to deliver the other two?

A. Yes; I said I would mark off the notes with pencil or ink in such a way that they would be either hard
1245 to read, would not be easy to read.

Q. Did you take a receipt from Mr. Alberts for the two books which you did deliver to him?

A. I do not believe I did.

Q. Did you display to Mr. Alberts at that time the two books that you were not delivering to him?

A. I did.

Q. I hand you two notebooks which you produced at the time of the pretrial deposition, and ask you what those two books are.

A. These are the books containing the first portion of the testimony and the latter portion.

Q. Did you show these to Mr. Alberts at the time you delivered the other two books to him?

A. I did.

Q. And at that time had you scratched out the testimony in the Larson-Zimmerman Interference which is contained in these two books?

A. I had.

Q. Did you show Mr. Alberts where you had scratched the testimony out?

A. I did.

1246 Q. At whose request was it that you scratched out the portions of the Larson-Zimmerman Interference testimony which appeared in these two books?

A. I don't know whether I did at anybody's, or whether I just did it on my own, so that I would show that they were not to be used by me any more.

Q. Now, for the purpose of the record in this case, will you indicate what pages of your notebooks which I am now handing you includes testimony which you took in the Larson-Zimmerman Interference?

A. In the first one, pages 150 to 154, both inclusive.

Q. That is in—

A. 150 to 154; and in the other book, which was the last part of the testimony taken, on pages 1 to 9, both inclusive.

Mr. Smith: If your Honor please, at this time I offer as Plaintiff's Exhibit 14 the book which has just been identified by Mr. Raftery, No. 14 being the book which is dated on the outside, "From October 7th, 1940." And as Plaintiff's Exhibit 15, the other notebook, which is dated on the outside, "From October 30th, 1940."

(Said notebooks so offered and received in evidence 1247 were marked respectively PLAINTIFF'S EXHIBITS 14 and 15.)

Mr. Smith: Q. Mr. Raftery, had you previously worked for Mr. Alberts?

The Witness: A. Yes.

Q. How long prior to the time that you took the Larson-Zimmerman testimony?

A. I don't remember exactly; but not so very long.

Q. I hand you Plaintiff's Exhibit No. 14, and ask you if you can tell from that notebook how long previous to the time of your taking the Larson-Zimmerman testimony you had worked for Mr. Alberts?

A. October 17th.

Q. What year?

A. 1940.

Q. What was the name of that case?

A. Before the Examiner of Interferences in the United States Patent Office, Walgreen Company and Charles R. Walgreen, Jr., opposer, vs. Greenwald Hosiery Company—

Q. What pages contain the notes that you just referred to, that you took in the Walgreen case?

A. Pages 100 to 132, both inclusive.

Mr. Smith: That is all.

1248 *Cross-Examination by Mr. Ooms.*

Q. Mr. Raftery, when you delivered the notebooks to Mr. Alberts, as you testified, you did so upon the instruction received in that letter, Plaintiff's Exhibit 16, did you not?

A. That and telephone conversation with Mr. Alberts. I told him I had received the letter and would bring them down to him.

Q. When did you have that telephone conversation with Mr. Alberts?

A. I imagine it was just about the time I received the letter; or maybe he called up a little bit before that and told me that the case was dismissed.

Q. You are sure that telephone conversation was not afterwards, in a call made by you?

A. I believe the call was made by him; I am not sure.

Q. You called him?

A. I think that is probably right.

Q. Did you have the letter when you called him?

A. If I remember rightly—well, I don't remember exactly whether I did, or whether he had talked to me beforehand and told me I was probably getting a letter, or how it came about. But anyhow, there was telephone conversation; and I told him I was bringing the books down.

1249 Q. You don't know, though, whether you got the telephone call first or had the letter first, or whether you made the telephone call or Mr. Alberts made the call?

A. No, I don't know.

Q. Mr. Fidler had not engaged you in that case?

A. He had not.

Q. Wasn't it a little unusual to get a letter from the attorney who had not engaged you in the case?

A. I took the matter up immediately with the attorney who had engaged me; I went down and saw him, telephoned.

Q. You had had some conversation with Mr. Fidler earlier in the month, when you were delivering some transcript; and you borrowed $20.00 from him?

A. That is right; I did not borrow, I thought he was going to pay for his copy; and he told me that Mr. Alberts was paying for his copy, and that he would advance me the $20.00, to collect from Mr. Alberts.

Q. Do you recall that we took your deposition in this case on May 6th, Mr. Raftery?

A. Yes, it was on a Thursday.
Q. Two weeks ago next Thursday?
A. Yes.

Q. Do you recall that I asked you when you re-
1250 ceived that letter of December 26th, what was the first thing you did; and you answered, "Well, whether I called Mr. Alberts, or Mr. Alberts called me up, but anyhow we got in touch with each other and he told me about what had happened; and I told him that I would bring the books down to him." Do you recall that conversation?
A. I do.
Q. And then I asked you, "Isn't it a fact that you did not have any telephone conversation with him, but went to his office with the notebooks and the transcript?" And you answered, "Well, that might be true"?
A. That is true.
Q. That is a possibility?
A. That is a possibility.
Q. And when you went to Mr. Alberts' office, did you have some unfinished transcript with you?
A. I do not remember definitely whether I did or not; I took down—if I had any left, I took down the balance that I had left. Whether or not I had delivered some before that or not, or finished part of it or not, I don't know.
Q. Well, whenever you did deliver any, you delivered two copies to Mr. Alberts and one to Mr. Fidler's
1251 office, did you not?
A. Well, I either did that or I delivered them all to Mr. Alberts and he sent the copy over; I think I took some over to Mr. Fidler's office.
Q. Do you recall when you took this last page that you made to Mr. Fidler's office?
A. I do not recall.
1251½ Q. Do you recall whether you delivered any to Mr. Alberts with these notebooks?
A. I don't recall that definitely, whether I did that day, or not. If I had any left, I did.
Q. Now, before you received that letter of December 26th, you had been subpoenaed to testify on December 23d, is that correct?
A. That is correct.
Q. And somebody called you and released you from that subpoena, is that correct?
A. That is correct.

Q. Do you know who that was?
A. Somebody from Mr. Fidler's office.
Q. Now, during the transcribing of this testimony, there had been some direction to you to hold up further transcription, had there not?
A. Yes, I am quite certain there was.
Q. Do you recall who gave that to you?
A. I think Mr. Fidler—I mean Mr. Alberts.
Q. Do you recall whether you ever talked to Mr. Hobbs about that?
A. Well, you asked me that on that last deposition and I do remember somebody else called up but whether he
1252 told me he was taking over for Mr. Alberts or what happened, I don't remember that definitely.
Q. Except for those instructions, did you industriously turn out this transcript as fast as you could?
A. Well, I wouldn't say so very industriously because I was very busy at the time and I was sick part of the time.
Q. There was no deliberate holding up of the job?
A. There was no deliberate holding up of the job, no.
Q. And both sides were pressing you to get out the transcript?
A. Well, I don't know both sides were, Mr. Alberts asked once in awhile how I was coming along on it.
Q. Didn't he call up and complain he wasn't getting it quickly enough?
A. I believe he did.
Q. Do you recall, Mr. Raftery, about two months ago a telephone conversation with Mr. Alberts about these notebooks?
A. Yes.
Q. What occurred at that time?
A. Well, he called me up and said—asked me if I remembered about this case and I told him I did and he said; well, it was coming up in some other form or some
1253 other way again and he asked me if I had heard anything from Mr. Fidler about it and I told him I hadn't and, "Well," he said, "you will."
Q. Was there any conversation about the notebooks?
A. I believe he asked me if I had any notebooks on it and I told him what I had left.
Q. Did you tell him that in that conversation two months ago?
A. That is my recollection.

Q. Isn't it a fact that you told him you had no notebooks?

A. No, I told him I had this portion of the notebooks.

Q. Isn't it a fact you told him that you had had the notebooks and Mr. Fidler had told you to destroy them?

A. No.

Q. You do recall your deposition taken on the 6th of May, do you not?

A. I do.

Q. I asked you at that time:

"Q. Now, Mr. Alberts called you about six weeks ago to ask for these notebooks, did he not?"

And you answered:

"A. He asked for the notebooks? He called me up and wanted to know if I had them.

1254 "Q. And what did you tell him?

"A. I told him I gave him the ones that had the full notes in, had nothing else but that case in.

"Q. Didn't you tell him that you had called up Mr. Fidler and he had told you to destroy the notebooks and you had destroyed them?

"A. If I did, it was just on the spur of the moment when I did not remember, I told him I did not remember. This letter reminds me of how I happened to do that. I did not call Mr. Fidler, I know that."

Then I asked you:

"Q. Mr. Alberts called you and told you that Judge Igoe had ordered those notebooks into court, didn't he?

"A. No. He did not tell me that.

"Q. Who told you that they needed the notebooks?

"A. He told me he wanted the notebooks.

"Q. And you told him you did not have any of them?

"A. That is so."

A. That is correct, I didn't have any of the full ones but I did have portions of the others.

1255 Q. You did so testify on May 6th, did you not?

A. I did so testify.

Q. Now, prior to May 6th, Mr. Fidler and Mr. Hilbben called on you about these notebooks, isn't that right?

A. They called on me about the case and asked me about the notebooks.

Q. And they showed you that letter, Defendants' Exhibit 16?

A. That is right.

Q. Then you recalled you had delivered those notebooks to Mr. Alberts?

A. That is right.

Q. And until they showed you that letter, you had no recollection of where they were?

A. Well, I hadn't paid any attention—I hadn't thought about it except—

Q. Have you finished your answer, Mr. Raftery?

A. No. What is the question?

(Pending question read by the reporter as above recorded.)

The Witness: I didn't know exactly where the other two portions that I had were and I looked them up and found them.

1256 Mr. Ooms: Q. You had told Mr. Alberts about a month before that you didn't have any, didn't you?

A. No, I told him I had the two portions.

Q. You told him that on the telephone?

A. That is correct. That is in my testimony there.

Q. Do you recall in your deposition of May 6th I asked you, reading from Page 18:

"Q. You say you had talked to these other people. When did you talk to them last, Mr. Hibben, Mr. Lindsey or Mr. Fidler?

"A. Mr. Hibben was down the other day and talked with me and then wanted to know if I would appear without a subpoena on this date.

"Q. Was that the first time that you saw Mr. Hibben?

"A. Well, Mr. Fidler was down with some gentleman, I think it was Mr. Hibben.

"Q. How long ago?

"A. Probably a week or two weeks ago.

"Q. Did you show them the notebooks at that time?

"A. No, sir.

"Q. Did you tell them whether you had the notebooks—

"The Witness: Oh, wait a minute.

1257 Mr. Ooms: Q. —or not?'

"A. Wait a minute. On the first visit, yes, I showed them the notebooks that I still have.

"Q. And when was that visit?

"A. A week or two weeks ago, something like that.

"Q. Not longer than that?

"A. No.

"Q. And when was the next time that Mr. Hibben was down to see you?

"A. It was this week, Monday or Tuesday.

"Q. And what did he say to you and what did you say to him?

"A. He said to me, 'I am going to ask you to come up and testify on a deposition,' and, 'What day will be convenient to you, or what time will be convenient to you?' and I told him I would like to have it about four-thirty, if possible, or some other time, because I might be in court and I did not want to lose what I could make in court by being up to testify on a deposition. So he asked me whether one o'clock Thursday would be all right, that is this Thursday, and I told him yes.

1258 "Q. Did he examine the notebooks at that time?

"A. No.

"Q. Did he show you that carbon copy of a letter which you have been shown here?

"A. He did.

"Q. What is that?

"A. He did.

"Q. Did you see that at the time that Mr. Fidler and Mr. Hibben called on you together?

"A. I believe I did.

"Q. And that refreshed your recollection as to this whole transaction?

"A. Yes.

"Q. Until you saw that letter, you did not know what you had done with the notebooks?

"A. I knew I had turned them over to somebody. I knew that I didn't have them.

"Q. And it is your testimony today that after you received that letter, you took them over to Mr. Alberts; and, whether it was preceded by a telephone call or not, you are not positive?

"A. I am not positive of that, but I did—"

You recall that testimony, do you not?

1259 A. Yes.

Q. Now, when you transcribed this testimony, Mr. Raftery, was it transcribed fully and correctly, as far as you went?

A. It was.

Q. Did you omit any parts of it in the parts that you actually did transcribe and deliver?

A. I believe I edited some of the cusswords that were in it, one of the witness' testimony.

Q. You took out some profanity?

A. Some profanity.

Q. Did you make any other changes in the testimony?

A. None other.

Q. Did anybody ask you to make any changes in that transcription from the notes as you recorded them?

A. Nobody.

Q. And you made no such changes?

A. None except what I just mentioned about the profanity.

Q. Now, you said you had done something to the two notebooks in evidence here as Plaintiff's Exhibits 14 and 15 to make portions thereof illegible?

A. I did.

Q. When did you do that?

A. I did that at the time I delivered the notebooks 1260 to Mr. Hibben—Mr. Alberts.

Q. Where did you do it?

A. In my office, as I remember it, before I went down to his office.

Q. Who told you to do that?

A. Nobody. I remember. I think I did that on my own because I was to deliver up the notebooks and I told him I couldn't deliver up those two and had to do something toward making them illegible.

Q. Do you recall that at the time your pretrial deposition was taken we examined those notebooks and found in the first one, Plaintiff's Exhibit 14, the only thing you did in the way of cancellation was your usual mark to show you had finished that column? Do you recall that?

A. That was the first one on which I had delivered the transcript and the transcript was in the hands of the counsel.

Q. And in the other one, Plaintiff's Exhibit 15, you made some scroll marks all over the pages?

A. That is correct.

Q. The pages can still be read, can they not?

A. To a certain extent they can.

1261 Q. You did read a part of these pages to Mr. Fidler and Mr. Hibben when they were in your office a few weeks ago?

A. I did.

Mr. Ooms: That is all, Mr. Raftery.

Redirect Examination by Mr. Smith.

Q. Mr. Raftery, just a couple of questions. Did Mr. Fidler ever ask you to destroy anything at all you had taken in connection with the Larson-Zimmerman Interference?

A. Unless I interpreted it that way from that letter.

Q. Did you interpret that letter that you should destroy any books or papers?

A. Not that I should destroy them but I should turn them over.

Q. To whom?

A. To Mr. Alberts.

Q. Did Mr. Lindsey ever ask you to destroy any documents in this case or any testimony you had taken?

A. No, I never met Mr. Lindsey before until the 6th when I was on that deposition.

1262 Mr. Smith: That is all.

The Court: Q. Is it customary to turn your original notes over to lawyers?

A. Judge, that is the first time I ever done it.

Q. That isn't anything peculiar to the patent practice, is it?

A. Not that I know of.

Q. You have taken other patent work?

A. I have.

Q. Did anybody ever ask you to do that before?

A. Nobody.

The Court: That is all, Mr. Raftery, I think. You haven't any further questions?

Mr. Ooms: No.

Mr. Smith: No.

Mr. Ooms: I would like to offer in evidence as DEFENDANTS' EXHIBIT 103, the original deposition of Mr. Raftery taken by the other side on May 6, 1943.

Mr. Smith: For what purpose, Mr. Ooms?

Mr. Ooms: For the purpose of impeachment, showing contradictions between his present and his previous testimony.

The Court: You mean the whole thing?

1263 Mr. Ooms: We will withdraw it.

Mr. Freeman: We have read it, so, it makes no difference.

The Court: That is what I thought.

(Witness excused.)

Mr. Fidler: Mr. Allen.

1264 VICTOR ALLEN, called as a witness by Automotive Maintenance Machinery Co., being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Fidler.

Q. Please state your name.

Mr. Smith: If your Honor please, Mr. Raftery states he has an order from an attorney to complete some of the notes in these books and he would like to have leave to take either or both of them out.

The Court: Give them to him.

Mr. Smith: If it is agreeable to the court, we will allow that to be done and then return them.

Mr. Freeman: We don't want them. We didn't ask for them to be produced. They are yours.

Mr. Smith: All right.

Mr. Fidler: Q. Please state your name.

A. Victor Allen.

Q. You are now and were in 1940 vice president of the Automotive Maintenance Machinery Co., plaintiff in this case?

A. Yes, sir.

Q. You were present at a conference held in my 1265 office on November 28, 1940?

A. Yes, sir.

Q. Who were present at that conference?

A. Mr. Joe Johnson, president of Snap-On Tools, Mr. Harry Alberts, attorney for Precision, Mr. Fred. G. Wacker, president of Automotive, Mr. Raymond Lindsey, Mr. George Thomasma, and myself.

Mr. Fidler: What is that answer?

(Answer read by reporter.)

Q. Raymond Lindsey?

A. Mr. Fidler, Pardon me.

Q. Referring to me?

A. Yes, sir.

Q. Who came into that conference first?

A. Into the conference?

Q. Yes.

A. Mr. Wacker and I came into your office first, that is, we were sitting there, and Mr. Joe Johnson and Mr. Alberts came in.

Q. And later who else came in?
A. Mr. George Thomasma came in.
Q. Who left that conference first?
A. As I recall it, Mr. Thomasma left first.
1266 Q. Who left next?
A. Mr. Johnson and Mr. Alberts.
Q. Do you know the purpose of that conference?
A. Yes.
Q. Please state it.
A. It was to hear Mr. Thomasma's story.
Q. Now, please tell the court what took place at that conference beginning with the time that Mr. Johnson and Mr. Alberts came in and ending with the time when they left.

A. When Mr. Johnson and Mr. Alberts came in, Mr. Johnson said, "Gentlemen, we come with clean hands," and I thought that was a rather strange remark.

So, we then sat down to hear Mr. Thomasma's story. You questioned Mr. Thomasma at length and we all heard his story. Then I believe Mr. Alberts asked one or two questions of Mr. Thomasma.

And then Mr. Thomasma left and Mr. Johnson and Mr. Alberts left.

Q. Do you recall any conversation between me and Mr. Alberts or me and Mr. Johnson?

A. I don't recall what conversation there was between you two.

1267 Q. Do you recollect any answers given by Mr. Thomasma to any questions asked by Mr. Alberts or by Mr. Johnson?

A. I believe there was a question by Mr. Alberts as to whether Mr. Thomasma and Mr. Johnson had ever met previously. I think there was that question.

I recall that I was surprised to hear Mr. Johnson say he had not met Mr. Thomasma and that Mr. Thomasma turned to Mr. Johnson and said, "Why, Mr. Johnson, you remember me?" or words to that effect.

Q. Did you hear Mr. Johnson's testimony in this case in court here?

A. I believe not. I think—I am a little confused as to the date. I think I heard Mr. Johnson's deposition in Mr. Freeman's office.

Q. Well, Mr. Johnson's testimony here on Page 357 of the record states:

"A. Mr. Alberts introduced me; it was the first time that I had met Mr. Fidler; and he made the statement at that time that we were there solely in behalf of Snap-On Tools Corporation. To which Mr. Fidler replied that so far as he was concerned, Snap-On was Precision, and Precision was Snap-On."

1268 Referring just to that last statement, did you hear any such thing as that at that conference?

A. No, I did not.

Q. Again Mr. Johnson testified in this way: He was asked:

"Q. Did Mr. Alberts say anything about what he was going to do in connection with the interference?"

And Mr. Johnson answered:

"A. Oh yes; he did state to Mr. Fidler that in view of the information that we had learned, that we would immediately get in touch with Mr. Larson; and that if the facts were substantiated by Mr. Larson, that he would grant a concession of priority, or whatever it happened to be, in the Interference proceedings; and also that he would withdraw as attorney for Larson."

Do you recollect anything like that being said?

A. I don't think all of that was said. What actually I heard was Mr. Johnson, after the testimony, stood up and said:

"Gentlemen, this smells to the high heavens."

And later, Mr. Alberts said that that if the facts
1269 or data that had been presented to us was substantiated later, he would withdraw from the case."

Q. Were you present at all times during that conference in my office on November 28th?

A. Yes, I was.

Q. You understand these questions I am asking you have to do only with that conference?

A. That is right.

Q. And Mr. Johnson further testified as follows:

"Q. Did Mr. Fidler make any statement to you or Mr. Alberts, or to both of you, as you were leaving?"

And he answered:

"A. Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker; that Mr. Wacker had spent considerable money on tension wrench patents, and that unless a satisfactory adjustment was made with him, that he would unleash the dogs."

Did I make any such statement as that at that meeting?

A. No, you did not.

Q. Mr. Johnson further testified in response to
1270 this question:

"Q. Mr. Fidler told you that?"

And he said:

"A. Yes, sir; he made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States patent officials, and that it was even a matter for the United States District Attorney."

Did I say any such thing as that at that meeting?

A. No, you did not.

Q. Now, Mr. Alberts testified in this case and I refer to Page 430 of the record. Did you hear Mr. Alberts testify?

A. Yes, I did, here in this court.

Q. And Mr. Alberts testified:

"—and Mr. Fidler made a statement to me that he was proceeding on the basis that Snap-On was Precision and Precision was Snap-On, and only under those conditions or under that understanding would he give us the information directly from Mr. Thomasma."

Did I so state at that meeting?

1271 A. Not that I heard.

Q. Mr. Alberts further testified as to what happened:

"A. Well, Mr. Fidler was quite shocked that I took that position as abruptly as I had taken it. And he said, 'Well, Snap-On's hands are not too clean in this matter either.' And then Mr. Johnson replied by saying that Snap-On's hands were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane."

Was anything like that said at that meeting?

A. Not at that meeting, no.

Q. Mr. Alberts further testified, on Page 431 of the record, as follows:

"Finally Mr. Fidler said to Mr. Wacker, 'What shall we do about it?' or 'What do you think we should do?' Mr. Wacker replied and said, 'Well, it is up to you.' and Mr. Mr. Fidler said, 'Well, you are here now. I told you I would get you the information firsthand. I have Mr. Thomasma here. We might as well go ahead with the
1272 conference,' and we then proceeded. He called in Mr. Thomasma."

Did anything like that take place at that meeting?

A. No.

Q. Mr. Alberts further testified, on Page 432 of the record, with respect to the examination of Mr. Thomasma:

"—and if I have anything to add I will ask permission later on to direct some questions to him."

He having previously testified that I was to go ahead and do the examining.

Do you know whether there was anything said at that conference about asking permission or what happened in that respect, do you, Mr. Allen?

A. No, I don't recollect.

Q. Mr. Alberts further testified as follows: He was asked:

"Q. Did you ask Mr. Thomasma any questions?"

And he replied:

"A. When Mr. Fidler said that he was through, and asked me if I had any questions, I said I had a few questions; and he said go ahead. So I examined Thomasma on what he had known about Snap-On Tools, and about myself;"

1273 Do you recollect anything like that?

A. No.

Q. Mr. Alberts went on to testify with respect to Thomasma:

"—if he was the inventor of this, why didn't he come in to see me. He replied by saying that Larson and Carlson refused to allow him to come and see me; that he wanted to come and see me, but they absolutely prohibited him from coming to see me.

"I asked him if he had gone to Snap-On Tools Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked if he had met Mr. Joe Johnson then; he said no."

Was anything like that said at that meeting?

A. Mr. Alberts asked him if he had met Joe Johnson and he said yes and Mr. Thomasma said yes.

Q. Those other statements about Mr. Thomasma, what Mr. Thomasma said?

A. I heard nothing like that. This is the part I remember of what you just spoke.

1274 Q. Mr. Alberts further testified:

"I asked him why he did not come to see me, if he

was the inventor he should have told me about this invention, and I could then have prepared the application in his name, if he was the inventor; that was the proper way of doing. He said that Larson and Carlson insisted if I knew that any ex-employee of Precision was connected with the Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision."

Was anything like that said at that meeting?

A. No, there wasn't.

Mr. Freeman: A little slower, please?

Mr. Fidler: Q. Mr. Alberts further testified, Pages 434 and 435 of the record:

"Well, we got our costs and hats; we stood up and were about to leave, when I made the statement to Mr. Fidler that under all of the circumstances that were presented to me at that meeting, that I would withdraw as attor-
1275 ney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; that they would use their influence on Larson to see that that was done; that I saw no other way out of it."

Was anything like that said at that meeting?

A. No, there wasn't.

Q. Mr. Alberts further testified on Page 436 of the record:

"I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority; and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do."

Was anything like that said at that meeting?

A. No, there wasn't.

Q. Mr. Alberts further testified, on Page 437 of the record:

"Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over five thousand dol-
lars investigating Larson and his associates; that a
1276 concession of priority alone would not satisfy him; that not only would is not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and settled promptly, or else Mr. Wacker would instruct him to unleash the dogs. And he continued by saying that he

had already talked to the Patent Office officials, and that if Mr. Wacker was compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense, that he certainly would have to go to the District Attorney with this matter."

Did I say anything like that at that meeting?

A. No.

Q. Mr. Alberts further testified, on Pages 437 and 438:

"Mr. Zimmerman was then residing at Hartford. During the discussion they told us that Zimmerman no longer was with Automotive Maintenance Machinery Company, and that he was then living in Connecticut. And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman as an engineer;"

Did Mr. Wacker and I get into a discussion as to the merits of Mr. Zimmerman as an engineer?

1277 A. No, you did not.

Q. And Mr. Alberts further testified on Page 438 of the record, as to this question:

"Q. And what happened after Mr. Fidler made the statement to you that concession would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?"

And he answered:

"A. Well, I couldn't say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation;"

Do you have any recollection of anything like that being stated at that meeting?

A. No, I do not.

Q. I ask you when did you, if ever, become aware that Kenneth H. Larson and any of his witnesses had testified falsely in Interference No. 77565?

A. Well, I heard Mr. Larson confess it in this court the other day.

Q. Was that the first time you were ever aware of that fact?

1278 A. Yes, sir.

Q. Did you at any time charge Mr. Larson or any of his witnesses with the crime of perjury—

A. No.

Q. (Continuing.) —on account of the testimony given in that Interference?

A. No.

Q. Did you at any time threaten to institute prosecution against Mr. Larson or any of his witnesses unless there was transferred to your company the Larson application and the sum of $500 and the execution of the agreement between Precision and Larson involved in this case?

A. No, I did not.

Q. Did you at any time promise to withhold complaint against Larson or any of his witnesses and suppress evidence of his or their perjury?

A. No, I did not.

Q. Did you at any time before or after the execution of the agreements involved in this case do any act to suppress the perjury of Larson or the perjury of any of his witnesses?

A. No.

Q. Did you threaten Snap-On, or its attorney with
1279 the crime of personally concealing knowledge of the crime of perjury?

A. No.

Q. Did you at any time threaten Snap-On and its attorney with alleged criminal conspiracy to defraud Automotive?

A. No.

Q. Did you at any time before or after the Snap-On agreement threaten or continue to threaten Snap-On?

A. No.

Q. Did you at any time make any threats or repeat any threats against Snap-On or its attorney?

A. No.

Q. Did you at any time force them?

A. No.

Q. Did you at any time exercise any duress or do any acts that were in the nature of duress?

A. No.

Q. Did you at any time do anything to compel Snap-On to do anything with respect to the cancellation of an agreement between them and Mr. Larson, which agreement is dated September 28, 1938?

A. No.

Q. Did you ever talk at all to Mr. Kenneth R.
1280 Larson or to Mr. Walter Carlsen, or any of the witnesses testifying in the Interference No. 77565, or to Mr. Harry C. Alberts, or to Mr. Hobbs, or to Mr. Joseph

Johnson, about the subject matter of the Interference and the settlement thereof?

A. No.

Mr. Fidler: That is all.

Cross-Examination by Mr. Freeman.

Q. Now, please tell us as best you can just what questions were asked of Mr. Thomasma and the answers given by Mr. Thomasma at the meeting of November 28, 1940?

A. Why, Mr. Freeman, I couldn't remember those questions.

Q. You couldn't?

A. I would have to look at the record. I could read them to you. I don't remember all the questions asked or answered.

Q. But you remember specifically what Mr. Fidler asked you as to whether or not Mr. Alberts had made any particular statement and he read from the record and you
1281 answered "No"?

A. That is right.

Q. That you remember definitely?

A. I remember those things, yes, sir.

Q. That is you—

A. But I don't remember the question you just asked, what questions were asked of Thomasma and what answers did he give. I couldn't remember each answer and each question.

Q. I understood you to say you had no definite recollection as to any of the conversations that took place there? And I am speaking about the meeting of November 28, 1940.

A. Well, I had certain recollections, as you would probably have in a meeting of that kind, certain highlights that stood out I remembered but, as for the whole thing, I am not a patent attorney and I couldn't go into detail on the thing with you but I did hear the highlights of the conversations and I tried to recall them to you.

Q. Why don't you give us then the highlights of the Thomasma examination?

A. Well, I think Thomasma—

1282 Q. You have given us all the absences, that is, what wasn't said. Now, I would like to know what was said.

A. Well, I think Thomasma's recital of the various things he did—it was more of a story than any answers he might have given. We were there to hear his story and we heard it.

Mr. Freeman: Read the answer, Mr. Reporter.

(Answer read by reporter as above recorded.)

Mr. Freeman: Q. Well, can you give me his story then?

A. Well, as I recall the story, briefly, he had during the time of his employment with us worked on a tension indicating instrument or wrench with Mr. Larson and at that time he had become a partner or an officer in another company who were going to start to make these wrenches; and that he looked at a drawing which was supposed to have been made by a high school boy and he had made it himself, so he said.

The situation, as he outlined it there, was that he was a disloyal employee and he gave his whole story as to what had happened and why.

Q. Well, what was the "why" part of his story as to why it happened? Go ahead and tell us.

1283 A. Well, as I recall it, I don't know what his reasons were for doing it—

Q. Whatever he told you at this meeting is all I want.

A. Well, I think I have given you what he told or the gist of the whole thing.

Q. You have given, to the best of your ability, your recollection of what transpired?

A. I think so. I have heard a great deal in the trial and I don't want to inject things I have heard since this happening in 1940 into something I heard then and I have to be sort of careful that I don't do that, you see.

Q. Now, before Mr. Johnson and Mr. Alberts came into the room, you were there with Mr. Wacker and Mr. Fidler? That is correct, is it not?

A. That is correct.

Q. And what discussion did you have then prior to the time Johnson and Alberts came into the room?

A. What discussion? Oh, I would say we just generally discussed the things at this meeting.

Q. Is that the best answer you can give, Mr. Allen?

A. Why, I think so. I don't recall the exact wording.

Q. Did you discuss the story you wanted to present to Mr. Johnson and to Mr. Alberts?

1284 A. I didn't discuss that, no. That was in the hands of our attorney.

Q. Was it discussed either by Mr. Fidler or Mr. Wacker? It isn't material who did the discussing.

A. No, I don't think so. I don't believe we were there long enough to have any discussion particularly before they got there, if that is what you mean. You mean did we discuss what we were going to say or what Mr. Fidler was going to say?

Q. Well, was there any plan as to the presentation of the story you wanted to get across to Mr. Alberts and Mr. Johnson who were coming there to listen to some story?

A. No, I had no plan on that.

Q. Did you know, you, personally, prior to the time Mr. Johnson and Mr. Alberts came into the room on November 28, 1940, what the story was that was going to be presented to Mr. Alberts and Mr. Johnson?

A. I did not know personally.

Q. Do you know why Mr. Johnson and Mr. Alberts were present?

A. Yes, I did.

Q. And tell us what you know about that.

1285 A. Well, they were there to hear the story of Mr. Thomasma, exactly as I was.

Q. You hadn't heard Thomasma's story before?

A. No, I had not.

Q. Had you had an opportunity to read any of the correspondence that took place or was exchanged between your counsel, Mr. Fidler, and Mr. Wacker?

A. No, not any specific thing I could put my finger on.

Q. Weren't you generally informed with respect to the activity of the Precision Instrument Company?

A. Only in the manner of sales. You see, my work is largely sales and I don't handle the patent end of our business, so, I would be only informed with respect to certain effects of sales.

Q. Did you ever go out to Des Plaines and do any scouting around as to what Precision Instrument Company was doing?

A. Yes, I did.

Q. Who was with you?

A. I believe on one occasion one of our district salesman and on another occasion our engineer.

Q. And just tell me what was your purpose in
1286 doing this so-called scouting?

A. Well, I wanted to determine what this type of

wrench was of which we had been hearing in the trade and which we had heard was manufactured in Des Plaines and which we had heard was a Chinese copy of our product.

Q. Who had reported to you that it was a Chinese copy?

A. Various people in the trade.

Q. People that had seen the wrench?

A. Yes, people who had heard about it or had seen it or learned something about it.

Q. Did you take any steps to get one of the wrenches?

A. Not at the time, no. We later purchased one to look at it.

Q. And about how long was it between the first scouting trip you made to Des Plaines and the second one?

A. Now, I am not sure as to dates, Mr. Freeman, but I believe there must have been four or five months between the two visits. I first went to sort of verify a rumor and the next time I went I questioned certain people in the automotive business in Des Plaines with respect to this tool or instrument.

Q. You actually were in the Precision plant on one of these visits, were you not?

1287 A. I was never in the Precision plant.

Q. Did you have any of your associates that went out with you go into the Precision plant?

A. No, we did not want to go into the plant on either occasion.

Mr. Freeman: That is all.

1288 Mr. Smith: No further examinaiton of Mr. Allen.

(Witness excused.)

Mr. Smith: Mr. Lindsey.

Mr. Lindsey: I wonder if I may withdraw for the purpose—

Mr. Smith: Yes. Mr. Lindsey is withdrawing at this time for the purpose of testifying.

The Court: All right. The record may show that. Does he have to file a formal withdrawal?

Mr. Smith: I think it is sufficient on the record, with your Honor's approval.

The Court: It is all right with me.

HARRY W. LINDSEY, JR., a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. What is your name and address, Mr. Lindsay?

A. Harry W. Lindsey, Jr., 120 Abingdon Avenue, Kenilworth, Illinois.

Q. You are a member of what law firm, Mr. Lindsey?

A. Davis, Lindsey, Smith and Shonts.

1289 Q. Patent Attorneys in Chicago?

A. Patent Attorneys.

Q. How long have you been practicing law, Mr. Lindsey?

A. Nearly thirty-two years.

Q. And how long in Chicago?

A. I have been in Chicago twenty-two years. I came here in June, 1921 with the firm of Rector, Hibben, Davis and Macauley. I became a member of that firm in 1923 and I have been a member of that firm ever since, except it has had its name changed.

Q. When did you first become involved in any way in the Larson Zimmerman Interference?

A. I would say, directly, on December 9, 1940.

Q. What was the occasion of your becoming involved at that time and just to what extent and how?

A. Mr. Fidler asked me to come into his room to confer with Mr. Wacker and Mr. Fidler about a situation in connection with this Interference and some suggested settlements which had gotten under way by that time. I had heard of this Interference for sometime before that. Mr. Fidler and I have lunch frequently together, and in a very general way we talk about our cases. Unfortunately, I read a newspaper most of the time at noon, so I didn't 1290 pick up a great deal concerning it, and then during December, and in fact in November, I had a very heavy case in Grand Rapids, before Judge Roemer, that ran for some days. So I wasn't in my office a great deal prior to December 9th.

I may say that we adjourned the Grand Rapids case, we recessed the day before Thanksgiving, and then I returned to Grand Rapids the following Monday, as I recall, and I

was there a few days, and I was called into this conference on December 9th, shortly after I had returned to the city.

Q. Do you recall an occasion upon which Mr. Fidler was going before Judge Barnes on a motion in the Larson-Zimmerman Interference?

A. Yes, I recall that.

Q. Can you fix the date?

A. I couldn't fix the date exactly. It seems to me that it was prior to the time I went to Grand Rapids, probably early in November. I happen to know the date now because I have heard it, but I wouldn't have recalled it of my own recollection, I am quite sure.

Mr. Fidler came into my office rather early in the morning and was rather disturbed, and he told me that
1291 he had been attending the taking of the depositions in this Interference and that Mr. Alberts had instructed the witnesses not to answer some questions, and that he was rather suspicious of the testimony. He didn't go into any great detail, because he didn't have an opportunity, and he asked me if I thought he would be justified in advising Judge Barnes why he was asking some searching questions, and I asked Mr. Fidler, "Well, have you got any proof that there is anything wrong with this case?"

He said, "No, it is all on suspicion. I suspect some things."

And I told him by all means not to make any allegations or accusations until he had had sufficient proof, that I had been before Judge Barnes on several occasions and I didn't think that he would take kindly to any reflection upon witnesses or lawyers.

I may say, Mr. Smith, I am not trying to recite the exact words. That is too long ago. But that was the sum and substance of the conversation which I had at that time.

Q. On December 9th, at which time you were called
1292 into Mr. Fidler's office with Mr. Wacker present, what was the subject matter of the discussion at that time?

A. I wish to correct one thing I said. I don't believe Mr. Wacker was present that day. It is my recollection—

Q. What was said?

A. Mr. Fidler had outlined to me what the situation was. He told me that in substance—and again I am not trying to use the same language, it is too long ago—that Mr. Alberts had taken the testimony of nine witnesses, includ-

ing Larson, and that they had some very impressive exhibits, and he referred in particular to some drawings or a drawing and to a very impressive board which contained some wrenches. And he told me that from the start he rather suspected something in the case.

He told me about Automotive's long research work and development work which resulted in the Automotive wrench, that the Larson wrench or the wrench shown in the Larson application was quite similar. He told me about Thomasma. He mentioned, I know, the conference on November 28th at which Thomasma told his story to Mr. Alberts and Mr. Johnson and Mr. Wacker.

I now know Mr. Allen was there. I don't know whether I knew it at that time or not. He told me that he had talked to the handwriting expert and that he couldn't

1293 get a definite opinion, had been unable up to that time to get a definite opinion from Mr. Salmon. I asked him why he did not get Mrs. Keeler, because at that time I knew of a case Mrs. Keeler was in and I knew she was an outstanding handwriting expert and, as I recall, he said he couldn't get in touch with her.

And, in general, he told me the main facts behind the Interference and the facts as far as they had developed and as far as he knew them.

I may also say that he felt, and he stated to me, that he doubted whether the Larson testimony was true, that Larson was a man capable of building up this story which was supported by Larson and eight other witnesses. The testimony, according to Mr. Fidler, seemed to dovetail in very well, and it seemed to be supported by drawings and invoices and by wrenches, and from his experience, Mr. Fidler's experience, he didn't think that any layman was able to get these witnesses together and build up this story, if it was false, and that is what worried him. He couldn't say that it was false because it was so perfect, and he couldn't put his fingers on who really engineered the thing, if it was false.

1294 Q. Was there any talk about any offer of settlement which had been made up to that time?

A. Oh, yes. Mr. Fidler informed me, as I recall now—and, understand, I am not trying to repeat the words, it is too long ago, it is just my recollection—but Mr. Fidler advised me that Mr. Hobbs and Mr. Ed. Haight had called at his home and that they wouldn't talk about the testi-

mony; they didn't want to talk about it, and that they had made a proposition and, as I recall, Mr. Fidler showed me Mr. Hobbs' letter and also Mr. Fidler's letter to Mr. Hobbs.

Whether I actually read the letter at that time I couldn't say, but I do know that Mr. Fidler gave me the substance of it, and I refer to Mr. Hobbs' letter of December 6th to Mr. Fidler, Defendants' Exhibit No. 66, and Mr. Fidler's letter to Mr. Hobbs of December 6th, Plaintiff's Exhibit No. 29.

Q. From that time on, December 9th, 1940, did you take any active part in the negotiations which were ultimately concluded by a settlement?

A. Very active.

Q. On December 24, 1940 or December 23, 1940?

A. Very active.

1295 Q. What was the first thing you did in connection with the negotiations for settlement following your talk with Mr. Fidler on December 9th, 1940?

A. As I recall, Mr. Fidler advised me that the proposal made in Mr. Hobbs' letter to Mr. Fidler of December 6th was not wholly satisfactory to Mr. Wacker, and we discussed terms, which we thought would be fair, and I don't know whether I recommended it or Mr. Fidler suggested, that he draft a form of contract, and I may say that this time I was still very busy on this case in Grand Rapids because I was getting out a brief, it had been running for days. So I wasn't preparing any drafts. I was letting that to Mr. Fidler.

On December 11th—I have checked that with Mr. Fidler and other records, and that is the only reason I remember that particular date—I had a conference with Mr. Fidler and Mr. Wacker. Mr. Wacker was rather impatient about the situation. It was costing him considerable money notwithstanding that Thomasma had told his story on November 28th. The investigation by Mr. Wise was continuing and, incidentally, Mr. Wacker asked me if I thought that that investigation should be called off, and I said by

1296 no means, that it should be continued, because we hadn't sufficient proof that there was anything actually wrong in the Interference. We tried to explain to Mr. Wacker what the situation was, that we were confronted with this Interference through no choice of our own, and we were obliged to run down the facts; then, as I recall,

Mr. Fidler said he had heard nothing from Mr. Alberts and Mr. Johnson since the date of the conference in November, and Mr. Fidler prepared a draft.

I knew Mr. Hobbs had the highest respect for him and I thought Mr. Hobbs had a high respect for me, and high regards. So I suggested that I call Mr. Hobbs and tell him that we had prepared, or Mr. Fidler had prepared a draft of agreement which I had reviewed, and that in view of Mr. Wacker's impatience we wanted to have a conference immediately, and to come to some agreement or go ahead and take our depositions, that our time was running.

It was agreed that that be done, and I called Mr. Hobbs on the telephone and, unfortunately, I suppose I was a little too abrupt. I told Mr. Hobbs that we had prepared a proposition and that I would like a conference the next day, because we were submitting it with the understanding that it would either be turned down or we were
1297 going ahead with our depositions.

And Mr. Hobbs was very angry. He said he didn't care whether I or Mr. Wacker was Hitler—I remember that very clearly—and he hung up the phone without saying good-bye.

As Mr. Hobbs has already suggested, and if the Court may have been able to discern, I not have somewhat of a temper, and it made me very angry to have Mr. Hobbs deliberately hang up in my ear when I meant no offense, and I hadn't been discourteous, and had no intentions of being discourteous, and thereupon I dictated what I called "minimum terms". It is in evidence as Plaintiff's Exhibit—at any rate, it is the one that is dated 12 11 40, and entitled "Minimum Terms for Total Settlement."

Q. I hand you a document and ask you if this is what you are now referring to?

A. This is the document that I am referring to.

Mr. Smith: I would like to offer in evidence, if the Court please, as Plaintiff's Exhibit 59, the document which Mr. Lindsey has just identified as being "Minimum Terms for Total Settlement".

1298 (Said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT NO. 59.)

The Witness: While I have a quick temper, it is over very quickly, and after I dictated this memorandum I cooled off very considerably and was rather ashamed at

myself, that I got mad, and I called back Mr. Hobbs and I started to tell him that I was sorry about our altercation before, earlier in the day, and he said, "Well, I want to apologize to you. I shouldn't have hung up in your ear. My secretary was there when I did it and she is here now, and when I hung up she told me that I was no gentleman, and," he said, "let's forget it," and I said, "I am more than willing to do it."

He said, "I can't see you today, but will you and Mr. Fidler have lunch with me tomorrow at the Union League Club?" where he is a member.

I may say, I never showed this Plaintiff's Exhibit No. 59 to Mr. Hobbs. We started a fresh discussion that day.

Mr. Smith: Q. That day, do you mean the day of the luncheon?

A. The day of the luncheon at the Union League 1299 Club, which was December 12th, 1940.

Now, I have refreshed by recollection, and I think that is the day.

Q. Who was at that luncheon other than Mr. Hobbs and yourself, if anyone?

A. Mr. Fidler. No one else. Just the three of us.

Q. What was the discussion at that luncheon?

A. We were attempting to reach a basis for settlement of the Interference. Mr. Hobbs had proposed a royalty. Mr. Wacker had proposed a higher royalty and, as I recall, Mr. Hobbs said that Precision was in no position to pay any royalties for a wrench, and the discussion really revolved upon what could be done by way of consideration to Wacker for a license from Wacker to Precision to take the place of cash royalties, and we discussed that at some length.

I told Mr. Hobbs that we weren't interested in granting any license, as I understood Mr. Wacker's position, that I didn't see why Precision, or, rather, Larson, did not grant us, that is, Zimmerman, a concession of priority. That would have terminated the Interference. We could have done nothing about it.

A concession of priority is a very simple paper in 1300 which the party who wants to give up their Interference simply says, in substance, "I concede priority in the invention to my opponent." And I told him also the same thing could be accomplished by a mere statement of abandonment in the Patent Office.

He reminded me that Snap-On was the legal owner of the Larson application, and under the rules of the Patent Office the consent of Snap-On was necessary, and he said, besides, that he wasn't willing to have Larson merely give us a concession of priority because he wanted to protect his client, he was afraid that we would issue that Zimmerman Patent immediately and sue the client, that is, Precision, for infringement, and they wanted to have the opportunity to finish making the wrenches which were on order from Snap-On, and he said that they ran several thousand in number.

In view of his position that he would not grant a simple concession, the thing that we were most desirous of having, and we told him so, and he questioned whether Mr. Alberts would agree to release the Larson application so that Larson could do so, there were several suggestions made.

1301 One of them was that there be a cash consideration, that the Larson application in Interference be turned over to Automotive and, as I recall, that day there was also a discussion about another Larson application that we considered, whether it would be worth while to take over.

I want to say now that at that time I had never examined any of these applications. I had seen the wrench. Mr. Fidler had shown me the wrench. I think he showed me a wrench by—no, he didn't either, just an Automotive. So I wasn't familiar with the applications. I was relying entirely on Mr. Fidler's judgment as to the value of that.

We also wanted, and we told Mr. Hobbs, that there should be an acknowledgment of validity of the Zimmerman patent, and I don't know whether there was any discussion as to particular claims or not, but certainly in my past experience in settling numerous Interferences, I am sure that we at least gave Mr. Hobbs a definite idea that we would want Precision to acknowledge the validity of any claims that might issue in the Zimmerman patent, because of the common subject matter shown in the Larson and Zimmerman applications.

As I recall, it was agreed that Mr. Fidler would work

1302 further on his draft of an agreement. I can't recall definitely at this time whether actually a written instrument was submitted to Mr. Hobbs on the 12th or not, but I do know that for several days thereafter Mr. Fidler was preparing an agreement, and occasionally he

would come in and ask me about some term or provision. I couldn't tell you what they were now. It is too long ago.

Q. When was the next conference held between any of the parties looking towards the settlement of this Interference, as you recall?

A. The next conference that I knew of was on December 13th, as I recall.

Q. Do you recall who was at that conference and where it was held?

A. Mr. Hobbs, Mr. Alberts, Mr. Fidler and myself.

Q. Where was it held?

A. It was held in Mr. Hobbs' office, as I recall.

Q. Can you tell us what was discussed at that conference?

A. At that conference we discussed and reviewed very much what we had the day before with Mr. Hobbs. As I recall, there wasn't much, in addition, said. The two conferences occurred so close together that it would be
1303 impossible for me at this time to segregate the two and say exactly what was said on one day and what was said on another day.

Q. Do you recall whether anything was said in the December 13th, 1940 conference by Mr. Hobbs or anyone else with reference to who was going to represent Larson and Precision in the event the Interference was continued?

A. Yes, I remember that very distinctly.

Q. What was said and who said it?

A. Mr. Hobbs made it very clear to Mr. Alberts and to Mr. Fidler and me that he had been retained by Precision to simply represent Precision and Larson in the settlement negotiations, and he said he didn't want to have anything to do with the Interference directly, that he didn't want to be the attorney of record in that case, and he wanted us to understand that, and there wasn't any question about what his position was.

In other words, he didn't want to be attorney of record in the Patent Office. That left only Mr. Alberts upon whom we could serve any papers. He was still officially representing Larson in the Patent Office.

Q. What next did you do in connection with a pro-
1304 posed settlement of this Interference? When I say "you" I mean you personally and not your firm.

A. Well, matters were drifting along. We hadn't heard from—there weren't any more conferences for a few days.

and on December 18th Mr. Fidler received, from Mr. Alberts, Mr. Alberts' long six page letter of December 17th, 1940.

Q. That is the one that is in this record as Defendants' Exhibit No. 73?

A. That is correct. Mr. Fidler came to my office and we discussed the letter. The first three pages of it, mostly closely typewritten, or rather, the first two pages, were a long dissertation by Mr. Alberts about a Larson application in which he stated, in effect, that Larson had filed an application and that it really covered an invention by a man by the name of Wadraven. I remember that part of the letter very well, because I remarked that I wondered if Mr. Alberts was in the habit of filing applications in the names of wrong parties if in fact the one in Interference was not the invention of Larson. That was something that we were not concerned with, who was the inventor of this second Larson application.

1305 Then he proposed that Automotive give to Snap-On a free license for a period, a short period, he called it, and he went so far as to attempt to require Automotive to acknowledge validity of a patent which would issue on an application which had not even been filed. It struck me as a very unusual demand when that application was not involved in the Interference. Then he made it clear to me, to Mr. Fidler and me in this letter, that he was not disposed to release legal title to the application in order to permit Larson to give Zimmerman a concession of priority which would terminate the Interference.

In the second from the last paragraph of his letter he says:

"Without the concessions herein made by Snap-On Tools Corporation, Larson and his nominee could not effect settlement with Automotive Maintenance Machinery Company, and this proposal has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation, irrespective of the outcome of this controversy."

1306 Now it was clear to Mr. Fidler and me that Mr. Alberts was definitely serving notice on us that we would either have to accept his proposition as set forth in his letter of December 17th or he would not have anything to do with Larson or permit Larson to agree to concede

priority. It was evident from that flat statement of Mr. Alberts that we had reached an impasse.

Whereupon Mr. Fidler and I on December 18th, 1940 agreed that there was no use in wasting any more time.

We served notice on Mr. Alberts that we proposed to take certain testimony on December 23rd, and we accompanied that notice with a letter which I wrote to Mr. Alberts on December 18th, 1940, that being Plaintiff's Exhibit No. 30. I also sent a copy of that to Mr. Hobbs, that is, of the notice and also the letter, and the letter that I sent to Mr. Hobbs is dated the same day, that is, December 18, 1940, and is Plaintiff's Exhibit No. 31.

Q. All right.

A. Am I answering these questions too fully?

Q. That is all right. I will stop you if I think so.

1307 After this notice was served, and the letters of December 18th had been written to Mr. Alberts and Mr. Hobbs, that you have described, what was the next thing that happened in connection with the settlement of this case?

A. The next thing in connection with the settlement was on December 20th, when there was a conference—

Q. First, let me draw your attention to the letter of December 19th which you addressed to Mr. Alberts. Do you have that in front of you?

I think I am wrong. Go right ahead. I am wrong on that date.

A. I was going to say there was some correspondence leading up to that meeting, Mr. Smith.

Q. All right. Go ahead.

A. We received on the 19th, as I recall, a copy of Mr. Alberts' letter to Mr. Hobbs dated December 18th, 1940. That is Plaintiff's Exhibit No. 32.

In that letter Mr. Alberts advised Mr. Hobbs that he was enclosing a substitute power of attorney to make Mr. Hobbs the attorney of record in the Interference on behalf of Larson. He also definitely served notice on Mr. Hobbs

1308 at the same time and also on me personally, having sent a copy to me, that he would not release title to the Larson application until the agreement was settled satisfactorily to him, and I say that because he says in his letter:

"Further I wish to advise that my clients, Snap-On Tools Corporation, shall be ready and willing to reassign Lar-

son's patent application, Serial No. 232,723 to Larson just as soon as Larson can furnish tangible security to indemnify Snap-On Tools Corporation for any damages occasioned to be it by virtue of Larson's or his nominee's inability to comply with the terms of the agreement of September 28th, 1940."

That was an agreement that Snap-On and Precision had entered into.

When I received this letter, I fear I had another flash of temper. Mr. Hobbs had made it perfectly clear to Mr. Alberts, in the presence of Mr. Fidler and myself, that he would not take any part in the Interference, and that he didn't want to be the attorney of record in that case on behalf of Larson, and in view of what had gone before in connection with the taking of testimony and the delay of
1309 the Reporter in getting out the transcript, and the failure to turn over to Mr. Fidler the testimony that should have been transcribed, I told Mr. Fidler that we thought it was time now to be rather sharp with Mr. Alberts. I told Mr. Fidler, or at least we discussed it, that it looked like Mr. Alberts and Snap-On were going to play dog in the manger, and that we may as well be rather sharp. Whereupon I wrote to Mr. Alberts my letter of December 19th, 1940, which is Defendants' Exhibit No. 68.

Q. Go ahead and explain that letter, without my asking you a question.

A. This letter has been the subject of quite a little testimony, and I would like to go into it. It is going to take me a little time to finish my answer.

1310 Q. Mr. Lindsey, as of the close of yesterday's session, we had reached the question of the letter written by you to Mr. Alberts under date of December 19, 1940. Will you continue from there, please?

A. As I explained yesterday afternoon, I had received Mr. Hobbs—I mean Mr. Alberts' letter of December 17th and also a copy of Mr. Alberts' letter to Mr. Hobbs of December 18th, and it was manifest that we weren't getting any place in the negotiations and Mr. Hobbs had sent Mr.—Mr. Alberts had sent Mr. Hobbs a substitute power of attorney and Mr. Hobbs had already informed us definitely he would not take any part in the Interference.

Whereupon, I wrote my letter of December 19th to Mr. Alberts and, as I recall it, had it delivered by a messenger.

In the letter I referred to the responsibility or Mr.
1311 Alberts and I told him that he was not in a position to dodge that responsibility. I start out by saying I want to make our position perfectly clear and I felt justified in doing that in view of the situation as it then existed.

I stated in the letter that Mr. Alberts was still attorney of record, and that was true, he had never withdrawn from the Patent Office, he had never filed an associate power of attorney. In fact, he himself recognized that he was attorney of record in the case, notwithstanding his testimony here that he had withdrawn on November 28th or 29th, whenever it was, because on December 2d, Mr. Alberts himself entered into a stipulation with Mr. Fidler in the Interference and then represented himself as being the attorney for Larson in the Patent Office.

We recognized, of course, that Mr. Hobbs was only representing Larson and Precision in connection with the settlement agreement.

Q. Just to intrude one question here, what is the fact as to whether Mr. Alberts ever withdrew as attorney for Larson and Precision in the Interference?

A. Mr. Fidler told me he had our associates in
1312 Washington examine the files and they never found and place in the file where Mr. Alberts had actually withdrawn.

Q No, go ahead and answer the previous question.

A. Snap-On still had previous title to the Larson application, as stated in my letter.

I told Mr. Alberts that he had taken the depositions on behalf of Larson which, of course, is undisputable.

"You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on behalf of Automotive."

That information was given to me by Mr. Fidler.

"You employed the reporter."

There is no question about that.

"Part of the transcript is not reported correctly or fully."

I don't think there can be any dispute about that. One of the witnesses, Mr. Fidler told me, used a great deal of profanity which seemed to Mr. Fedler to rather cast a reflection on his character and, as I remember, Mr. Fidler told me he was one of the witnesses whom he suspected had

given incorrect testimony. It certainly wasn't reported fully.

1313 "The reporter delayed in transcribing part of the record."

And that is certainly true. The testimony of Larson closed about November 4th and we never did get all of the transcript. December 2d Mr. Fidler informed me Mr. Hobbs had suggested that what had not been transcribed be held up but we had certainly been waiting for it for a month without any excuse, as I recall.

I state on the second page of my letter in the middle of the page that he couldn't shift his responsibility to Mr. Hobbs. Mr. Hobbs, as I have already stated before, had already informed us he would take no part in that Interference and that was in the presence of Mr. Alberts.

And I stated frankly and advisedly that we did not propose to permit either Mr. Alberts or Snap-On to divest themselves of their responsibilities and those responsibilities were to have that record transcribed.

We intended to take depositions. We had served notice on Mr. Alberts we were going to take depositions and, if he wished to withdraw, it was his definite responsibility to appoint an attorney in his stead whom he knew would serve instead of trying to appoint one whom he knew

1314 would not serve.

Now, those were the responsibilities I referred to in this letter, and Mr. Alberts in my judgment then and in my judgment now has never fulfilled those obligations.

Now, as to the part of the letter which I skipped and which has been referred to here by a previous witness or so, I say:

"You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth."

Mr. Fidler and I suspected, and strongly suspected, that there was something wrong with that picture. We strongly suspected that there had been some perjury committed. Thomasma had given his statement. Mr. Fidler gave me the substance of that statement. It was almost incredible to me that everything Thomasma has said was also false and, yet, we couldn't believe Thomasma's story without corroboration.

Thomasma had been a disloyal employee of Automotive. I knew that while in the employ of our clients he had or-

ganized or helped to organize the Precision Company to make a wrench which Mr. Fidler told me was very similar to the Automotive wrench then on the market.

1315 On the other hand, there were nine witnesses that Mr. Fidler told me about who had told this story in their testimony, that is, Larson's story, which was supported by drawings, by invoices, by these beautiful exhibits that someone got up very nicely, someone who, apparently, was familiar with Interference practice, and it was inconceivable that we could accept Thomasma's story without corroboration when it was opposed to the testimony of nine witnesses and the testimony had been taken by a member of the bar.

And I suspected at the time I wrote this letter that both Mr. Alberts and Mr. Johnson knew a lot more about that story than we did. Mr. Alberts had taken the testimony. I had no doubt that after he had left our office, after his conference on November 28th when Mr. Thomasma had told his story, that he had consulted with Larson and, possibly, Carlsen and I naturally thought that he would also approach these other witnesses, particularly those who Mr. Larson has testified perjured themselves, in order to endeavor, to make a sincere endeavor, to get the true story.

And, therefore, I said:

"You must recognize"

1316 because I suspected all of this. I didn't know it and, frankly, I was trying to smoke Mr. Alberts out. That was one of the purposes of that statement.

Then I say:

"Mr. Johnson of Snap-On has been fully advised of the situation,—so far as it has been developed—and I assure you that there are further developments to still be revealed."

Mr. Johnson had been advised of all the developments we knew of, all I knew was what Mr. Fidler had told me, and, particularly, about Thomasma's statement, Mr. Johnson had been fully advised of that.

The only other thing I knew of at the time was that we had evidence that Snap-On knew that Thomasma was employed by Precision.

Now, this sentence which I have read on its face is a little contradictory because I say Mr. Johnson has been fully advised and then I say:

"and I assure you that there are further developments to still be revealed."

Manifestly, I meant that there would be further developments and in that regard I thought there might be and with that in mind Mr. Fidler and I had decided to call
1317 as witnesses Mrs. Carlsen and Mrs. Larson in an effort to try to get at some of the truth behind this story which proved to be entirely faked.

Then I stated:

"You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman patent without the slightest justification."

Mr. Alberts had not withdrawn. As soon as we served notice of taking testimony, he attempted to appoint a lawyer to take his place whom he knew wouldn't serve and to me that was evidence of a plan to delay and delay and delay and, as far as I knew, Mr. Alberts was responsible for not having had that transcript completed. We wanted to go ahead.

And, in that regard, I had in mind Mr. Alberts' letter to me of December 17th, or his letter to Mr. Fidler, in which he made his long proposition and discussed the second Larson application and served notice on us to "either accept the proposition which I state in my letter or we won't let Larson settle."

It was manifest to me from a conference we had on December 13th, Mr. Hobbs and Mr. Alberts and Mr.
1318 Fidler and myself, that Larson was willing to settle. I suspected there were good reasons for him wanting to settle, I did not know, and I felt quite confident that it was Mr. Alberts who was blocking it and haggling for a deal and that Mr. Johnson was back of him.

Q. Now, following your sending of that letter to Mr. Alberts, did you receive or did you have called to your attention the letter which was addressed by Mr. Alberts under date of December 19, 1940 to your firm, to your attention?

A. Yes, I received that letter and I recall it very well.

Q. What did you do as a result of that letter, if anything?

A. I called Mr. Fidler into my room or went into his room and he read it and the question came up whether I should answer it and I had already made up my mind on that score. I said I wasn't going to answer it. It was a

most intemperate letter, unwarranted letter, and if I answered it, it would simply bring forth another tirade or harangue which would only be useless correspondence and we might as well go ahead and take the depositions.

1319 Q. Now, on December 20th, there has been testimony that a conference was held. Did you attend that conference?

A. I did in our office, Mr. Frank Parker Davis' office, our suite, and it was attended by Mr. Alberts, Mr. Fidler, Mr. Hobbs and myself.

Q. What was the subject matter of discussion at that conference on December 20, 1940?

A. As soon as Mr. Alberts came in and we were assembled, I still had this intemperate letter of his in mind—

Q. You are referring to what?

A. His letter of December 19th to me, Mr. Smith.

Q. All right.

A. I wanted to clear that up first and I told Mr. Alberts that he had read into that letter many things that wasn't there, many things which were not intended, that I was not accusing either Mr. Alberts or Mr. Johnson of anything in that letter, that the only thing I wanted to make clear to him was that he had responsibility with respect to obtaining the untranscribed testimony in the Interference and, if he wished to withdraw, he should file a proper substitute power of attorney in the Patent Office so we
1320 would know who to serve papers on as required by the Rules of Practice of the Patent Office.

Q. When you say he, Alberts, had read into that letter something you hadn't meant, what letter were you referring to?

A. I was referring to his letter to me of December 19th, the one which I have been discussing, and in regard to reading into my letter, I was referring to my letter to him of the 19th in which I pointed out to him what his obligations were.

Q. What further discussion was there at the meeting of December 20th?

A. Well, at the meeting of December 19th, Mr. Hobbs' letter, we had submitted a joint draft of contract, as I recall, and Mr. Alberts objected. He said he wanted a separate contract for Snap-On and there should be a separate one for Larson and Precision.

Mr. Fidler drafted those two separate instruments. I discussed them with him and they were the basis of discussion at the meeting of December 20th.

And we talked back and forth about terms, there were some changes made in the drafts in longhand, and
1321 there may have been some paragraphs dictated to one of our secretaries—I forget just how they were changed, in what manner—but we spent some little time in discussing the matter, more or less horse trading back and forth, and Mr. Fidler called Mr. Wacker once or twice and Mr. Alberts called Mr. Johnson or, at least, called Snap-On, from other rooms than Mr. Davis' room.

And, as I recall, at the time the meeting broke up we had tentatively agreed to these contracts that were to be executed by our respective clients.

Q. Let me call your attention that in the answer which you have just given you referred to the meeting with Mr. Hobbs of December 19th.

A. I should have said 13th.

Q. Now, was there any arrangement made as to who should type up the agreement which you had tentatively reached at the meeting of December 20th?

A. That job was turned over to Mr. Fidler.

Q. You did not have anything to do with that?

A. I did not have anything to do with that.

Q. What was the next thing you had to do with reference to the negotiations?

A. Well, I think the next thing was, as I recall,
1322 was the meeting again in Mr. Frank Parker Davis' office the day before Christmas.

Q. Let me ask you, at the time that the agreement was tentatively reached on December 20, 1940, was there anything said about not continuing with the taking of the Zimmerman testimony which had already been noticed?

A. Yes, we agreed we would not take testimony on the 23d in that regard.

Q. Go on to this meeting of December 24th. Where was that held and who were there?

A. That was held again in the offices, Mr. Davis' office in our suite, and Mr. Fidler and Mr. Alberts and Mr. Hobbs and I were present.

We had a Christmas party for the whole office the day before Christmas and it had been in progress. We hadn't, as I recall, began to eat our lunches yet and we came out

and greeted—came into Mr. Davis' office and greeted Mr. Alberts and Mr. Hobbs and exchanged the copies of the contracts which had been executed.

Q. Was there any further discussion other than exchanging the copies?

A. There was a discussion as to what to do with
1323 the testimony which had been transcribed and with the reporter's notebooks and Mr. Hobbs remarked that he would like to have all that preserved and Mr. Fidler and I said we would, too, and we thought that the safest way to have it preserved was to have it turned over to Mr. Alberts who had been attorney for Larson and was still of record and who had taken the testimony rather than leave it in the hands of the reporter.

We didn't know how long Mr. Raftery held his notebooks and Mr. Fidler and I didn't know how responsible he was. We had never met him before. In fact, I had never met him. And we had knowledge he had delayed transcribing that testimony for a month and Mr. Fidler told me he came over and got twenty dollars from Mr. Fidler and he didn't strike me as being the most responsible sort of a reporter. I had never heard of him before.

We thought the safest thing to do was to have it all turned over to Mr. Alberts.

I might say, of course, we didn't have the original testimony. All we had was a copy of what had been transcribed and we assumed that the reporter was holding the original subject to instructions from Mr. Alberts.

1324 Q. Was there any discussion as to what should be done with the copies of the transcribed testimony which had already been delivered to you as attorneys for Zimmerman?

A. Mr. Hobbs asked Mr. Fidler if he would preserve the Thomasma affidavit and, frankly, I don't remember whether the question of the testimony, of preserving the testimony, had arisen or not, that is, whether Mr. Hobbs had asked Mr. Fidler to preserve it, but I know that prior to that time Mr. Fidler and I discussed this subject to the preservation of the affidavit and we agreed that it should be preserved by all means.

We had known of litigation where there had been interferences and the testimony disappeared and the attorneys had been criticized and there were some very critical questions had arisen and, furthermore, we wanted to keep that

testimony in the event that any third person should attempt to attack the validity of the Zimmerman patent after it had issued. There was every reason why we should want to keep it.

Q. Did Mr. Hobbs state what his reasons were that he wanted all these things preserved by the respective attorneys?

A. I don't remember that he did, Mr. Smith.

1325 Q. Was that the end of your participation in the settlement of the Larson-Zimmerman matter?

A. Yes, I don't think I had anything to do further. Mr. Fidler carried that on.

Q. Mr. Lindsey, one more question about this December 20, 1940 conference in Mr. Frank Parker Davis' office:

Was there any discussion at that conference specifically, or any inference that a bonfire should be held or any testimony destroyed or disposed of or hidden or anything of that kind?

A. Nothing of the sort; not one shred or one word about it.

Q. I will ask you that same question with reference to the conference at which you exchanged the executed documents on December 24, 1940.

A. The same answer.

Q. Now, what is the fact as to whether there was any mention ever made by anyone as to a bonfire or the destruction or disposing of any testimony or any evidence or any drawings or any exhibits during any of the negotiation conferences which ultimately led to the settlement between you and Mr. Hobbs and Mr. Alberts and Mr. Fidler or anyone else?

1326 A. Absolutely none.

Q. Was there any mention or suggestion in any of those conferences by any of those persons with reference to suppressing evidence in any manner whatever?

A. Absolutely none.

Q. Or for any purpose?

A. Quite the contrary. It was agreed by all four of us that the testimony and affidavit would be preserved.

Q. Now, what is the fact as to whether during any of these conferences in which you participated there were any offers made by you or Mr. Fidler or anyone else on behalf of Automotive to anyone, either Larson or Precision, or Attorney Hobbs, or Attorney Alberts, that you—when I

say you, I mean Automotive or its attorneys or agents—would not prosecute Larson for any alleged perjury if Larson and Precision and Snap-On would enter into a settlement of the Larson-Zimmerman Interference?

A. Absolutely not a word.

Q. Was any request ever made at any of the conferences which you attended by anyone that you or anyone else on behalf of Automotive agreed not to prosecute Larson or any of his witnesses if Snap-On or Larson and Precision agreed to a settlement of the Larson-Zimmerman
1327 Interference?

A. Not a single request either expressed or implied.

Q. Now, what is the fact as to whether during any of these conferences which you attended any representation was ever made by anyone that Larson or Carlsen or any of the other witnesses who testified in the Larson-Zimmerman Interference had ever admitted perjury either to Mr. Alberts or Mr. Hobbs or Mr. Johnson or anyone else?

A. There was absolutely none and, if I may add, Mr. Smith, Mr. Fidler and I discussed this testimony on several occasions and I cautioned Mr. Fidler again and again to make no accusation, never to use the word perjury, because he did not have sufficient proof to establish anything of the sort; that it would be dangerous to do so; that from my past experience of over thirty years, when I had any contact with a situation where I suspected perjury, I always found it advisable not to make any accusations, and I knew of instances where accusations had been made and it was unfortunate.

1328 Q. When you say unfortunate, what do you mean?

A. Well, it was a reflection on responsible attorneys and could not be proved. I had gone through, if I may make this statement, a great deal of motor meter litigation. There were some, oh, fifteen, twenty suits filed in this vicinity; Mr. Charles Neave, of Fish, Richardson & Neave was the principal attorney. I was representing him in this district. And as I say, there had been a number of suits filed. There were a number of instances where there had been some counterfeiting; and I consulted with Mr. Dave Stansbury in connection with several of those cases. And I was well warned by Mr. Stansbury to be awfully careful not to make any accusation that I could not prove. I ran into one situation in Cleveland where there was an

accusation made as to fraudulent counterfeiting motor meters; and as I recall, it cost the motor meter considerable money because they were not counterfeited, they happened to be repair motor meters.

Q. Now, as an actual matter of fact, when did you first become aware that perjury had in fact been committed in the Larson testimony, in the Larson-Zimmerman Interference?

A. I can answer that this way: I suspected, when
1329 Mr. Fidler told me the story back in 1940; I was fairly well convinced when Mr. Alberts in his Second Amended Petition, as I recall, charged that Automotive and its attorneys were guilty of compounding a felony, or guilty of accusing Larson of having perjured himself. Mr. Alberts did not allege in that petition that Larson had perjured himself. Later Mr. Alberts filed his Third Amended Petition, in which he asserted that Larson had perjured himself; and then I was more sure of it.

Mr. Ooms finally, after some months, filed an amended answer. He represented Larson in the suit; and he definitely charged that Larson had committed perjury. But I didn't know it, I was not sure of it until Mr. Larson testified before his Honor in this court, in March of this year.

Q. Let me just ask you this: When I asked you whether during any of these meetings there was any discussion or charges of perjury, did you in making your answer consider the fact that I was including in charges of perjury falsification of drawings or exhibits, and things of that kind, too?

A. Oh, yes. I never discussed any of that with Mr. Alberts, Mr. Fidler, or Mr. Hobbs; and there was no
1330 discussion of any of that in any of the conferences which I attended.

Q. Well, there has been testimony here with reference to $500 being paid over to Mr. Thomasma for certain stock which he owned in Precision, in connection with this settlement, are you able to testify as to what that deal was, and how it came about?

A. You mean how it happened that the $500 got into the contract?

Q. Yes.

A. The situation there was that Mr. Hobbs in his original suggestion to Mr. Fidler proposed that Precision pay

a royalty. Mr. Fidler then proposed a ten per cent royalty. Mr. Hobbs advised us that Precision would be unable to pay any royalty. And during these conferences we had with Mr. Hobbs, it was a matter of trying to work out some consideration for the license which Automotive was giving to Precision with respect to these 6,000 wrenches; and also with respect to the release which Automotive was giving to Precision.

Because we had in mind, as had Mr. Hobbs, that Thomasma had been our employee; and while our employee, and with the knowledge of Larson, Thomasma had estab-
1331 lished or helped establish the Precision Company.

And we felt that there was a cause of action against Precision.

In trying to work out what that consideration would be, we asked for this $500, and we asked for the Larson Application, which had some claims to a feature which was not involved in the Interference and which was not the invention of Zimmerman.

In that connection, Mr. Smith, I would like to state that I would want to correct a wrong impression which I may have given the court when I was discussing, a week ago last Monday, I think, these contracts: I read that part of the transcript—as I recall, the Court asked me if there was a further loss; and I said yes. And what I meant, of course, was that there happened to be a continuing royalty per wrench; but the consideration was the matter which I have just stated.

Q. Do you know anything about the purchase of this Thomasma stock?

A. I knew it was purchased; as I recall, I spoke to Mr. Thomasma about it, and I asked Mr. Thomasma if he would take $500; and he said yes.

Q. At whose request did you ask Thomasma if he would take $500?

1332 A. Well, that was one of the conditions of settlement we had with Mr. Hobbs early in the correspondence, as I think an exhibit shows; Mr. Hobbs said that the proposal was conditioned on receiving Thomasma's stock, and we told him, Mr. Hobbs, that we would use our best endeavor to accomplish that end.

Mr. Smith: That is all.

Cross-Examination by Mr. Freeman.

Q. Mr. Lindsey, will you kindly repeat the oath that was administered to you yesterday afternoon by Judge Igoe, just prior to the time you took the stand?

A. I don't think I could repeat that oath word for word; I have heard it many times. I said I would tell the truth, the whole truth, and nothing but the truth, so help me God.

Q. And that truth includes the word "the whole truth", does it not?

A. Oh, yes.

Q. Now, tell me whether you mean to convey to Snap-On and to its attorneys anything different than what the words "the whole truth" meant to you yesterday,

1333 when you wrote to Snap-On; rather, to Mr. Alberts, with a copy that you asked that he send to Snap-On, on December 19, 1940?

A. I have already explained what I meant, very definitely. I do not quite get your question, Mr. Freeman.

Q. Did the words "the whole truth" as used in your letter of December 19, 1940, mean anything different to you then than the words "the whole truth" as used by his Honor, Judge Igoe yesterday afternoon, when the oath was administered to you?

A. No.

Q. And you know that when you do not tell "the whole truth" that that in effect is perjury?

A. No.

Q. When under oath?

A. No, I don't know that.

Q. In other words, you could sit on the stand and not tell the whole truth, and not falsify or commit perjury?

A. That is right; I could be mistaken in my testimony, Mr. Freeman; it would not be the truth, but I would still be mistaken. All I take is an oath to tell the truth to the best of my recollection. It may not be accurate. I do not see what you are driving at, Mr. Freeman.

1334 Q. I am just trying to find out what you intended to convey to Mr. Alberts, as counsel for Snap-On, and what you intended to convey to Snap-On Corporation when you in your letter of December 19th, Defendants' Exhibit 68, said, "You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth."

A. I was trying to convey to Mr. Alberts and Mr. Johnson of Snap-On that they had heard Thomasma's story, that I suspected it was not true, and that furthermore I suspected that they found it was not true.

Q. You never used the word suspect anywhere throughout your letter, did you?

A. You asked me what I wanted to convey.

Q. And I am now asking you whether you used the word suspect anywhere through your letter.

A. The letter speaks for itself; certainly not.

Q. Will you please answer my question?

A. I am answering your question.

Q. And I gathered this morning that you were trying to smoke Alberts out; is that correct?

A. I certainly was.

Q. And you tried to smoke him out by charging
1335 that the testimony taken on behalf of Larson was not the whole truth; is that correct?

A. No.

Q. You did not intend that portion of the letter to do any of the smoking; is that correct?

A. Yes.

Q. Now will you tell me whether you intended a portion of that letter, that portion which had to do with not the whole truth, to help in smoking Alberts out?

A. Yes, I intended it for that purpose; yes.

Q. And you know that when you refer to testimony as not being the whole truth, that that in effect is saying that perjury has been committed?

A. I did not say there, Mr. Freeman, that that testimony was not the whole truth. You missed a sentence; you will have to read the whole sentence. I cannot answer the question, because I didn't say that.

Q. You emphasized the words "not the whole truth" by using just ahead of them the words "to put it mildly".

A. No.

Q. What did you say, then?

A. I said in this letter, "You must recognize," is what I said. I didn't say it was not the whole truth.

1336 Q. Whom did you want to recognize the fact that the Larson testimony was not the whole truth; whom did you want to get that information to?

A. I hoped that they would recognize it after they had talked to Larson; and I suspected they had.

Q. Whom do you mean by they?

A. Oh, I suspected that Mr. Alberts and Mr. Johnson had talked to Larson; I didn't know, I suspected it.

Q. You wanted your letter to have its effect upon Mr. Alberts, did you not?

A. And Mr. Johnson; yes.

Q. And that is why you took the extra precaution of sending a copy of your letter to Mr. Alberts, so that he in turn could send it on to his client, Mr. Johnson of Snap-On?

A. Yes; and the further reason that I wished them to recognize their obligation in having this testimony transcribed, and not delay any longer; that Mr. Alberts, if he wished to withdraw, should promptly appoint an attorney who, he knew, would act as Larson's attorney. That was the main purpose of that letter, Mr. Freeman.

Q. And you took the extra precaution of signing that second copy of the letter, so that Snap-On would have
1337 your letter direct?

A. Oh, yes.

Q. Instead of making a typewritten copy, without your signature thereon?

A. Yes; I wanted Mr. Johnson to know our position; because at that time I suspected—

Q. Rather strongly suspected?

A. Mr. Fidler suspected; I may say this—

Q. Well, tell me what you suspected; you wrote the letter, and you signed it.

A. I suspected that Mr. Johnson and Mr. Alberts was back of this whole perjury story; if it existed, and wanted Mr. Johnson to know our position with respect to Mr. Alberts' responsibility as an attorney of record in the Patent Office.

Q. You have made, or at least I have gathered from some of the remarks you have made yesterday afternoon and again this morning, that there was somebody back of us other than Larson; or I guess you said other than a layman? do you have any idea, or do you like to say whom you have in mind as being back of the Larson story?

A. It is rather a regretful thing when one attorney has
1338 to testify against another one in court; and I dislike doing this very much—

Q. Just as much as I dislike cross-examining you.

A. I have been driven to it, and I will answer the ques-

tion, also I am rather reluctant to do so; you want my answer.

Q. Yes; let the ax fall where it may, and the chips fly.

A. It is inconceivable to me then, and it is inconceivable to me now, and I do not believe that Larson was the one that got all of these witnesses and concocted this story, got these invoices, had the drawing pre-dated, made up that beautiful model,—will you please hold that up to the Court—I do not believe, did not believe then and do not believe now, that Mr. Alberts merely told Mr. Larson to prepare the board and put the models on, and that Larson did it in that fashion.

I have been practicing patent law for over thirty years. I have seen beautiful exhibits, and this is what I call a beautiful exhibit. And I have seen Mr. Larson in the court room, I saw him testify; and I would be very dubious whether he had the mental capacity to build up that story alone. That is my answer; I hate to give it, but that is it.

Q. All we want is—

1339 A. That is the truth.

Q. And did you get that information from Mr. Fidler, or is that your own information?

A. What information?

Q. As to what you just testified to with respect to the models?

A. Oh, yes; Mr. Fidler told me about those models.

Q. And he had the same suspicion that you have?

A. Well, that is what he told me.

Q. And you both agreed on that?

A. Oh, yes.

Q. And is that what you had in back of your mind when you said that you cannot shift your responsibility?

A. I was speaking primarily to Mr. Alberts, that he could not shift his responsibility to Mr. Hobbs. Isn't that what the letter says, Mr. Freeman?

Q. Yes; you have a copy of it. I am not trying to read portions—

A. That is all you read; now let us read it, Mr. Hobbs. Now, that is exactly what I meant.

Q. Now tell me what you wanted to convey to Mr. Johnson and Snap-On—and your letter was written with some dashes in it, so it is a litlte hard to take any one

1340 part of it without being accused of not reading it all; so I am going to read it all: "Mr. Johnson of Snap-

On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed." And I would like to have you tell me now what were these developments that were still to be revealed?

A. Those developments I hoped would be revealed. I had already said Mr. Johnson had been fully advised of the situation, at least as we knew it. And the rest of that sentence manifestly means that I hoped there would be further developments, and I believed that there would be.

That is one of the reasons that we had called Mrs. Larson and Mrs. Carlsen as witnesses. We were still having the investigators investigate, even after Thomasma had given his statement. In fact, the expense has about doubled after that, showing that we certainly—

Q. When you say expense, are you referring to the pretext expense, or are you referring to service charge of the investigator being doubled?

A. Oh, I think both. I forget. I would be glad to look at it. As I remember,—You have been talking about this $4700; as I recall, about half of that was spent after 1341 Thomasma had given his statement. And I think I figured up that almost $2000 was spent in trying to get the truth of Thomasma's story, whom we doubted, from the time of this meeting when he told Mr. Johnson and Mr. Alberts his story until the contracts were exchanged, Mr. Freeman.

Q. In your letter wherein you say—again, you refer to the letter—"Johnson of Snap-On has been fully advised of the situation so far as it has developed," and I take it you are referring now to the information that was conveyed to Mr. Johnson at your office on November 28, 1940; is that correct?

A. I think that is true; together with any other information that he may have obtained, that I didn't know.

Q. And at the meeting of November 28, 1940, it was brought out that Thomasma had been connected with AMMCO and also with Precision?

A. So Mr. Fidler told me; yes.

Q. And Fidler told you what was done in 1938; that was your testimony here this morning?

A. You mean with respect to Thomasma—

Q. To Thomasma's connection—

A. With Automotive?

Q. With Automotive; yes.

1342 A. Yes, I forget the date, but I think it was 1938.

Q. Yes, that was my memory of your testimony.

A. I don't know as I testified 1938.

Q. If Larson's testimony with respect to the development of his wrench was in 1934, if you knew that testimony to be true, then clearly there would have been no testimony of Thomasma's connection with either AMMCO or Precision as late as 1938?

A. The question is rather involved; I do not get that question.

Q. I will ask the question over again: Larson, so you were informed, testified that he made his wrench in 1934 and 1935?

A. Yes, in general about some of his activities in 1934; I forget whether he testified that he made a wrench that year; I wouldn't say, Mr. Freeman.

Q. And if that were true, whatever connection there was between the Precision, Thomasma, and AMMCO in 1938, would have no bearing upon the situation; is that correct?

A. Oh, I would say that is correct; yes.

Q. And you testified this morning that the Thomasma situation; that is, his connection with AMMCO and Precision—now, if there was that connection or liability 1943 that would attach to Snap-On or to Precision, then you must have known that Larson's testimony was false?

A. Not at all. That is just argument. I didn't know it was false; I never knew it was false absolutely until Mr. Larson testified in the court room. I do not follow your argument at all.

Q. Now, I have heard considerable about the reporter; you heard the reporter testify yesterday that he got the transcript out as fast as he could, that he was ill after the taking of the testimony stenographically?

A. I forget whether he said he was ill; I remember he said he did it as well as he could, yes.

Q. And do you recall that he testified here yesterday that all he omitted were the cuss words used by one of the witnesses?

A. Yes, I heard that.

Q. Is that what you meant when you said part of the transcript is not reported correctly or fully?

A. That is my impression; that is my recollection, yes.

Q. In other words, that was the accusation that you were making against Mr. Alberts in that letter of December 19th?

A. I was not making any accusation against Mr.
1344 Alberts in that regard; I simply made a statement.

Let us not read anything into that letter that is not in there, Mr. Freeman.

Q. I am not going to. You made a statement, "Part of the transcript is not reported correctly or fully?"

A. That is right; and both were true.

Q. It was the omission of the foul words of one witness that prompted this statement?

A. I forget whether it was one witness or not; I know that Mr. Fidler told me that part of the testimony was full of profanity, and that he wanted it in there because he wanted to show the character of the witness who was testifying.

Q. Did your office ever ask the reporter to include the profanity in the transcript?

A. As I recall Mr. Fidler told me that he complained about it.

Q. Did he ever complain to Mr. Alberts about it?

A. As I recall, I think he did; I won't be sure. That is my recollection.

Q. He did not do it by letter?

A. As far as I know, I have not seen a letter.

Q. And you have had an opportunity to go through
1345 your correspondence?

A. Oh, I have not gone through all the correspondence; we submitted to you a file of correspondence that thick. (Indicating)

Q. I am frank to confess, I didn't find that.

A. Mr. Fidler went through that; and if he found the letter was of no consequence—

Q. Do you think Harry Alberts was responsible for giving any directions to the court reporter to omit the profanity?

A. My answer, I am sorry to make it, I don't know.

Q. It wasn't anything out of the ordinary for Mr. Alberts, who was taking testimony in behalf of his client in the Interference case, to employ a reporter, was it; that is usual, isn't it?

A. Not at all; but when you have a reporter you have

the responsibility of getting the transcript out too, Mr. Freeman. I never knew of an attorney who tried to dodge that responsibility.

Q. Now just tell me what Mr. Alberts did, and I am willing you tell me what Mr. Fidler told you, even though it is hearsay.

A. About what?

Q. About Mr. Alberts keeping the reporter from 1346 transcribing the evidence.

A. I don't think Mr. Fidler ever told me Mr. Alberts kept the reporter from transcribing the evidence; if I have given that impression, I certainly did not intend to.

Q. Did you have any one from your office gibe the reporter with respect to getting the notes transcribed?

A. No, I did not personally threaten; I know Mr. Fidler did not. I don't know—

Q. Didn't your Mr. Smith, of your office, call on the reporter several times after the taking of the testimony; that is, somewhere between November 4, 1940 and the time there was a halt called to the transcribing of the testimony by Mr. Hobbs, on or about December 2, 1940?

A. I presume you are referring to Mr. Schmid?

Q. The gentleman from your office.

A. I just want to get it clear; because Mr. Smith is one of my partners; and Mr. Schmid was an office boy at that time. As to that, I couldn't say. You would have to ask Mr. Fidler.

Q. Now tell me why either Mr. Alberts or Mr. Johnson should realize, and I am now quoting from your let-
1347 ter, "that you are holding up the issuance of the Zimmerman patent without the slightest justification?"

A. Well, in the first place, it suggested a concession of priority; true, coupled with conditions; they were haggling for a settlement.

In the second place, Mr. Alberts was attorney of record; and as soon as we served notice on him, he tried to appoint another attorney who, he knew, would not act.

In the third place, I got the definite impression from conferences which we had had before that Larson was willing to settle and that Mr. Johnson and Mr. Alberts were holding up anything that Larson wished to do.

And in the fourth place, I strongly suspected, and my

suspicions have since been confirmed, that Mr. Alberts and Mr. Johnson had talked to Larson, and that Larson had confessed. And that is the reason for that sentence.

Q. Well, then you knew at the time that you wrote this letter that Larson had confessed perjury?

A. Oh, no, not at all, Mr. Freeman.

Q. Well, I am asking you upon what you based the information contained in this letter, not what you now know.

A. Sure, suspicion; it was a very suspicious situation.

1348 Q. You agree with me, as patent counsel, that if Larson's testimony were correct, notwithstanding your suspicions, he had the right to have his day in court in the Patent Office?

A. Oh, yes; but I would not admit, if I get your question, that at the time that Mr. Larson and Mr. Carlsen confessed to Mr. Alberts and Mr. Johnson, that there was any further justification for any proceedings in the Patent Office, or any haggling for a deal such as Mr. Alberts and Mr. Johnson made.

When they found that there was perjury, and that that story was all faked, there was a duty on the shoulders of Mr. Alberts to abandon the contest immediately, and to advise Mr. Larson to do so, and his client Snap-On; and Mr. Johnson, instead of trying to saw off those clients on to Mr. Hobbs. That was a definite duty.

Q. Are you defending Mr. Hobbs here?

A. I am not defending Mr. Hobbs, no; he is capable of defending himself. You asked me a question.

Q. You keep on saying about wishing this off on to Mr. Hobbs.

A. Didn't he turn over the negotiation settlement to Mr. Hobbs?

1349 Q. Mr. Hobbs took them voluntarily, did he not?

A. Yes, according to his story he didn't know there was perjury. Now, there is no use if Mr. Freeman and I arguing this case now, your Honor, please. I have no objection to answering any question.

Q. Now, would you like to tell me with respect to this "slightest justification:" I think that is important, and I haven't got a good answer.

A. Maybe you do not like the answer, but it is the best I can give; I have nothing to add and nothing to subtract. It satisfies me, Mr. Freeman.

Q. In other words, you were willing definitely to go on record on December 19, 1940, that Mr. Alberts and Mr. Johnson of Snap-On were holding up the issuance of the Zimmerman patent without the slightest justification; and you are willing to go on record, or make that statement based solely on your suspicion?

A. No, I have already given four reasons.

Q. I am asking you what you knew then, not what you know now.

A. You will have to refer back to my answer; you are taking one, you will have to take all four.

1350 Q. Would you mind giving me those four reasons over again, even though it may be repetition?

A. Well, it is pretty hard to get them in the same order.

Q. Well, any order.

Mr. Smith: I think the reasons have been given, if your Honor please.

Mr. Freeman: I would like to get them, your Honor.

The Court: Let us get them, to save time.

The Witness: A. In the first place, as I said, as I recall, I was convinced, or rather believed that Mr. Larson was willing to settle, and that Mr. Johnson and Mr. Alberts were blocking that move. There was a suggestion which Mr. Alberts made to us in his letter of December 17th, in which he suggested a concession of priority, that he was haggling for attached terms.

Mr. Freeman: Q. Is that the second—

A. That is the 17th.

Q. No, but is that the second reason; or is that still part of the first one?

A. Well, I wouldn't want to repeat those reasons—that is the second reason, yes; and the fact that they were willing to concede the priority, even under terms 1351 which to me seemed to be extravagant; I felt that they had been informed by Larson of the true story which we suspected.

Next, Mr. Alberts, as soon as we served a notice of taking depositions, attempted to appoint an attorney in his stead, when he knew he would not act, that Mr. Hobbs would not act. And to me that was a deliberate attempt to stall and to delay matters. They were afraid to face the music. At least, that was what his action implied to me.

Now, I may have got the four reasons in, there rather together. I am through.

Q. Well, that is three of them, as I have it.

A. Well, the fourth may be in there, I think, about my suspicion, so willing to concede priority.

Q. Isn't it true, Mr. Lindsey, that your temper got the best of you when negotiations had fallen through, on about December 18th or 19th; and you then wrote that letter of December 19th?

A. No, that is not true. Because, if I may answer—

Q. You were calm, cool and collected when you wrote that letter?

A. If I may answer the questions,—

1352 Q. : Go right ahead.

A. I consider that negotiations had fallen through when I received Mr. Alberts letter of—

Q. On the morning of December 18th?

A. If I may finish,—of December 17th, 1940, Defendants' Exhibit 73, in which he made certain demands and then served notice on us in no indefinite terms. I read from his letter: "Without concessions herein made by Snap-On Tools Corporation Larson and his nominee could not effect a settlement with Automotive Maintenance Machinery Company, and this proposal—" which Mr. Alberts made—"has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation, irrespective of the outcome of the controversy."

And when I received that letter, so far as I was concerned, negotiations were through; and it did not make me mad at all. We were perfectly willing to go ahead with the testimony, and that is the reason we served notice on Mr. Alberts.

Q. And when you say you were perfectly willing to go ahead with your testimony, one of your witnesses
1353 was going to be the wife of Kenneth R. Larson; correct?

A. Yes, that is correct.

Q. And she, of course, would know nothing at all about Zimmerman dates, your client's dates?

A. Oh, no; we were going to try and find out whether Larson's story was true.

Q. You were going to prove Larson's story wrong?

A. We were going to try to, Mr. Freeman; that is all we could do; we hoped to.

Q. And you also subpoenaed the wife of Mr. Carlsen; correct?

A. Yes.

Q. And she, like Mrs. Larson, would know nothing about your client's dates?

A. That is right, I think.

Q. And again, you were going to endeavor to prove that Larson's story was wrong—

A. We were trying to find a breach in this perfect story, which nine witnesses had told, supported by documentary evidence and models; yes.

Q. And you wrote Mr. Alberts when you sent your notice of taking testimony that your first witness would be the court reporter, Mr. Raftery; is that correct?

1354 A. That is correct. We wanted to get that untranscribed testimony.

Q. You were going to have him transcribe the testimony?

A. We expected him to read his notes, yes; we had not had it. That is right.

Q. And you expected him to do that in your office on December 23, 1940, when the return of the subpoena was made; correct?

A. I would say, correct.

Q. And you had, I think, on that same notice of taking testimony Mr. Schmid from your office?

A. Yes.

Q. I am now asking you whether he was going to testify with respect to the Zimmerman dates, or was he going to testify with respect to Larson?

A. I know he was not going to testify—I am sure he was not going to testify with respect to Zimmerman dates. Frankly, Mr. Freeman, I do not recall just why we included Mr. Schmid in that notice. I am quite sure Mr. Fidler had a reason, and suggested his name; but I cannot give the answer, I am sorry.

1355 Q. And the fifth and last witness on that notice was Mr. Raymond Fidler; and do you know whether he was going to testify with respect to the Zimmerman activities, or was he going to testify with respect to Larson?

A. As I recall, Mr. Fidler was certainly going to testify as to Zimmerman activities; that is my recollection. He

had followed the development and had prepared the application, the Zimmerman Application.

Q. Do you want to state now that you knew that Mr. Fidler was going to testify with respect to Zimmerman dates?

A. Well, that is my best recollection. Now, he may have wanted to testify about something else, in Thomasma's connection with Automotive.

Q. You wouldn't want to say?

A. As I say, that is my recollection; I wouldn't say positively, but that is my recollection; and I think it is correct.

Q. And do you recall that in your letter, wherein you said on December 18th that Mr. Raftery would be the first witness, that you concluded that letter as follows, and I read: "For your information, we also advise that at the conclusion of the taking of the testimony here we will proceed to Kenosha, Wisconsin to take several depositions, that we will give you notice of these depositions
1356 later." Now, at Kenosha, Wisconsin, do you recall who were going to be the possible witnesses there.

A. No, I do not recall the names of them, Mr. Freeman. As I recall, we had some information that Snap-On knew that Thomasma was connected with Precision. There had been several telephone calls, Mr. Fidler advised me; I think there was one or two calls of an employee or two of Snap-On; and they readily advised the persons that telephoned that Mr. Thomasma was connected with Precision; and as I recall at this time, that was the testimony which we intended to take. Of course, if it led any place, we would probably have taken Mr. Johnson's too.

1357 Q. Well, I am not interested in what it might lead to. I want to know what you were going to do at Kenosha when you wrote the letter of December 18th, 1940?

A. I have answered that to the best of my ability at this time.

Q. And that likewise was testimony directed to refuting or tearing down Mr. Larson's story, as distinguished from putting in evidence directly in behalf of the invention made by Zimmerman, is that correct?

A. Yes, except to prove, of course, that Snap-On had been using Automotive's wrench and had constructed and had sold many of these wrenches which Precision virtually

copied. I think that was another thing that Mr. Fidler hoped to prove. He was more familiar with the proofs than I was.

Q. You knew, did you not, that the sales relationship between Snap-On and Automotive started about 1936?

A. I probably did. I forget the date now. I knew that, Mr. Fidler told me, that this wrench had been designed by Zimmerman and had been sold by Automotive to Snap-On, but I wouldn't try to remember the dates because that was just a circumstance that entered into the picture and not so very directly.

1358 Q. Do you recall now, Mr. Lindsey, as to whether or not the sales relationship between Snap-On and Automotive was subsequent to the dates alleged by Larson in the Interference?

A. Do you mean the first commercial intercourse?

Q. The relationship with respect to torque wrenches, the subject matter here involved?

A. I don't know, and I don't remember whether I was ever told. I had nothing to do with the Automotive Company, except to talk to Mr. Wacker. I think this is one of the first things I ever got into for Mr. Wacker, and that wasn't until about December 9, 1940.

Q. Do you know why you were called in on December 9th, 1940 in the midst of negotiations that were then being carried on by Mr. Hobbs and Mr. Fidler?

A. Oh, I had met Mr. Wacker before and I think I had several, probably, brief conferences with him about his matters. I don't think I ever made a charge for any of them, and Mr. Fidler and I are very close together. We call each other in when we have a problem. That is a very usual thing. The same as I usually go into Mr. Frank Parker Davis' and solicit his cooperation, and he solicits my help, on the theory, I guess, that two heads are

1359 better than one.

Q. Isn't it true that when you entered this picture Mr. Hobbs had made a proposal to your client directing it to Mr. Fidler on December 6th, 1940—

A. Yes.

Q. —and at the same time Mr. Fidler had written to Mr. Hobbs on December 6th, 1940, apparently the letters having crossed rather than being in answer to each other, Mr. Fidler having written the letter following his conference with Mr. Hobbs and Mr. Haight at his home on December 2, 1940, is that correct?

A. Yes.

Q. So that there had been a proposal in your hands from Mr. Hobbs when you entered the picture?

A. Yes.

Q. Had that proposal ever been turned down or any counter proposal ever been made to Mr. Hobbs when you entered the picture and called Mr. Hobbs on December 11th, 1940 when you told him that he would have to take it?

A. Yes, my recollection is that there was—

Q. I would like to have you give me anything that you have here showing that there had been a turn down or a counter proposal made in behalf of AMMCO to Mr.
1360 Hobbs between his letter of December 6th and when you called him and gave him the ultimatum, so to speak.

A. Do you mean documentary?

Q. Any kind.

A. I don't think there is any documentary. I know Mr. Fidler told me that he had called Mr. Hobbs and apprised Mr. Hobbs that the royalty that he had suggested was not satisfactory to Wacker, and Wacker wanted 10 per cent, I know that.

Q. That was the letter which was in response to the meeting between Hobbs, Haight and Fidler of December 2, 1940 and—

A. No.

Q. —and I predicate my question—

A. No. Let me answer now.

Q. All right.

A. That is wrong. It is true Mr. Fidler wrote that. Mr. Hobbs' letter still included the 6 per cent, 3 per cent—

Q. That is right.

A. So you see I am wrong, and Mr. Fidler called Mr. Hobbs about that letter.

Q. Was there any word of testimony from Mr.
1361 Hobbs, as you can recall, covering the period between the time he wrote you on December 6th and Mr. Fidler wrote him on December 6th, keeping in mind that those letters were not in answer to each other, and your telephone call where you gave him the ultimatum?

A. Well, I didn't give him an ultimatum. I am going to challenge that.

Q. When he hung up the telephone on you.

A. All right.

Mr. Smith: Just a minute, Mr. Freeman. Let the witness finish his answers, please.

The Witness: If you will read that question.

(The last question was read by the Reporter.)

The Witness: I don't recall all of Mr. Hobbs' testimony, and I don't remember anything that was said as to what transpired between those dates. There may be, but I don't recall it.

Q. Tell me what brought about the proposal that you dictated in your office, as you testified, after Mr. Hobbs hung up the telephone on you on December 11th, 1940?

A. I dictated that, and then after I dictated it I cooled off and called Mr. Hobbs.

1362 Q. Was Mr. Wacker in your office or Mr. Fidler's office when you telephoned Mr. Hobbs?

A. No.

Q. You have observed Defendants' Exhibit No. 20, which was taken from the files of Automotive, dated December 11th, 1940, wherein there appears in the handwriting of Mr. Wacker the following:

"Tentative settlement submitted by Fidler and Lindsey to Hobbs."

A. Yes, I recall that very well.

Q. Do you recall that?

A. Yes, very well.

Q. And Mr. Wacker was in your office on December 11th, 1940, as you have testified?

A. He wasn't. Oh, on December 11th?

Q. Yes.

A. No, sir.

Q. Yes.

A. No. Yes. On December 11th I talked to Mr.—I thought you were saying the 9th.

Q. No.

A. —to Mr. Wacker, but not in my office.

Q. Now, what was the necessity of dictating this

1363 memorandum if you now say that it was never given to Mr. Hobbs, and I now quote from Defendants' Exhibit No. 20:

"Time for acceptance or rejection of either proposition expires five p. m., Thursday, December 12th, 1940."

A. Oh, I remember that. As I already testified, Mr. Freeman, I was quite angry when Mr. Hobbs hung up in

my ear. I dictated that memorandum, and then I read it and decided I wouldn't submit it. I cooled off. Now, I don't know what answer you want.

Q. All I want is the facts.

A. If that doesn't answer your question, I will be glad to answer any further question.

Q. Well, then as long as Defendants' Exhibit No. 20 was prepared after your telephone call to Mr. Hobbs and, as you now testify, it was never submitted to Mr. Hobbs, will you tell us what proposal you were going to make to Mr. Hobbs when you did call him on December 11th, 1940, at which time he hung up?

A. As I recall, Mr. Fidler prepared some kind of a rough draft of a contract. It was not submitted to Mr. Hobbs either that day or the 12th and, as I recall, 1364 Mr. Fidler and I were endeavoring to find out some way out to get some consideration from Precision to Wacker with respect to this license, and I think that included the Larson application in the proposal at that time. I haven't seen that instrument. I don't even know whether it is in existence, as I recall, now. And when Mr. Hobbs hung up in my ear, why, I was trying to follow somewhat his original proposition, except to boost the royalty from 3 per cent to 10, and I believe I put in something about the acknowledgment of validity of the patents.

Q. And likewise you wanted royalty of 10 per cent on everything that had been sold from the date of the inception of the Precision business up to the time of the agreement?

A. I don't recall that we ever asked for that, Mr. Freeman. I may say that we never asked for the difference in price between the wrenches either.

Q. Are you now saying that you never asked for royalty upon those items which were sold by Precision from the inception of the Precision business up to the time of the settlement?

A. That is my recollection. The correspondence 1365 might show otherwise, but I don't recall it. Have you in mind any particular——

Q. You might look at the letter from Mr. Fidler to Mr. Hobbs of December 6th, 1940.

A. You asked me if I had. I didn't enter into this picture until December 9th, Mr. Freeman.

Q. Well, you had that in mind, did you not, when you

prepared your memorandum of Plaintiff's Exhibit No. 59, wherein you stated:

"Item 2: A royalty of 10 per cent of Snap-On's net selling prices of wrenches to trade on wrenches heretofore sold—"

A. Oh, yes.

Q. "—and hereafter to be sold on orders already taken."

A. That isn't what you asked me. I had it in mind, but then I never submitted that proposition. I told you I was angry when I prepared it and I never submitted it. I ditched it, so to speak, if I may use the vernacular.

Q. You ditched it and sent a copy of it or gave a copy of it to your client Automotive?

A. No, sir. I don't know how Mr. Waeker got that copy. I don't recall ever giving him—

1366 Q. And you don't—

A. If I may finish my answer.

Q. Yes.

A. I don't recall ever having handed Mr. Waeker a copy of that memorandum or having discussed it with him.

Q. And you don't recall how Mr. Waeker got the information that he placed upon the memorandum in his own handwriting in longhand?

A. No. I know I didn't give it to him.

Q. The memorandum was preserved in your office files?

A. The same as we have preserved everything, yes. Of course, I didn't keep those files, you understand. Those are all Mr. Fidler's files.

Q. What was the counter proposal then to Mr. Hobbs in reply to his letter of December 6th?

A. Well, I don't have that so very clearly in mind but, as I recall, Mr. Fidler told me that he called Mr. Hobbs and suggested either a modification of the royalty, or some other way to take care of this monetary royalty per wrench. I am frank to confess I don't remember the exact terms. There was considerable negotiation covering a considerable period of time, Mr. Freeman, and, as I re-

1367 member, I have never seen that rough draft memorandum and I don't know whether it is in existence and I wouldn't say for sure that there was a rough memorandum.

Q. Then the next order was your meeting with Mr. Hobbs at the Union League Club on December 12th?

A. Yes, that is correct.

Q. And that was following a telephone conversation between you and Mr. Hobbs after the abrupt telephone conversation?

A. That is correct.

Q. Then following that conference there was submitted to Mr. Hobbs the draft of the agreement that we now have in evidence as Defendants' Exhibit No. 14, is that correct?

A. Is that the joint—you don't need to show it to me. The joint—

Q. The joint agreement—

A. Yes.

Q. —where Precision and Snap On were parties on one side?

A. As I recall that was submitted to both Mr. Alberts and Mr. Hobbs on December 13th.

Q. December 13th?

A. Yes.

Q. And then you had a conference in Mr. Hobbs' office on December 14th where Mr. Alberts was present, Mr. Hobbs was present, in behalf of Precision?

A. The 14th, I don't recall that conference, Mr. Freeman.

Q. Well, perhaps that was Friday, December 13th.

A. That is the one I have already referred to. Yes.

Q. And you then left with Mr. Alberts a copy of that agreement and you likewise left with Mr. Hobbs a copy of that agreement, is that correct?

A. That is correct, as I recall.

Q. When you gave that copy to Mr. Alberts and likewise a copy to Mr. Hobbs did you put any time limit, or how soon they were to accept or reject or make a counter proposal in reply to that draft?

A. I don't recall that we did. I think we told him we would like to have it considered promptly, but I don't think there was any time limit at that time.

Q. Mr. Alberts received that on Friday, December 13th, is that correct, Exhibit No. 14?

A. Yes, that is correct.

Q. And then we had Saturday, the 14th, Sunday the 15th, and he wrote you on Tuesday the 17th, is that correct?

A. That is correct.

Q. You don't consider that any dilly-dallying on Mr. Alberts' part, do you?

A. Not at all.

Q. Because you know that he had to contact his people at Kenosha, Wisconsin?

A. Oh, certainly, I admit that it was prompt.

Q. And Mr. Alberts then sent you, on December 17th a letter outlining his views?

A. Correct.

Q. Now, upon receipt of that letter was there anything that justified the comment that Mr. Alberts and Snap-On were going to play dog in the manger?

A. That letter, coupled with Mr. Alberts' attempt to appoint Mr. Hobbs—

Q. I am talking about the negotiations. You are trying to make a settlement here as between two companies, and we don't build all the things that happened years before. I am talking about the letter. We are in the midst of these negotiations.

A. What was your question, Mr. Freeman?

Q. Was there anything in the letter which was sent to you on December 17th that justified your statement
1370 that it looked like Mr. Alberts and Snap-On were going to play dog in the manger?

A. Yes, that letter, taken in connection with the other letter, I cannot separate the two. They go together.

Q. That is, you took that letter and built up the fact that the Reporter had not yet transcribed the notes as promptly as he should—

A. I didn't build up anything. The letter speaks for itself. Mr. Alberts sent me his letter of December 17th in which he was proposing a new proposition, and he spent two pages in which he talked about Larson not being the inventor of another application and then along comes his letter to Mr. Hobbs where he serves notice—

Q. Now—

A. If I may just answer the question.

Q. Pardon me, I am sorry. I want to move along.

A. You have asked me to answer. Where he served notice on Mr. Hobbs that he wanted security, he wouldn't release the Larson application. I say altogether that indicated to me that Mr. Johnson and Mr. Alberts were playing dog in the manger.

Q. This dog in the manger situation arose on December 18th when you received Mr. Alberts' letter of Decem-
1371 ber 17th, did it not?

A. Oh, taken in connection with his attempt to appoint Mr. Hobbs.

Q. Well, you didn't receive Mr. Alberts letter to Mr. Hobbs, of Haight, Goldstein and Hobbs, until December 19th?

A. That is correct, I think, but I did receive—well, I think that is correct.

Q. So that at the time you talked to Mr. Fidler after receipt of the letter of December 17th, 1940 you had not yet received Mr. Alberts' letter of December 18th to Mr. Hobbs, is that correct?

A. No, no, that is correct. Of course, this letter alone, Mr. Freeman, gave me the impression that Mr. Johnson and Mr. Alberts were kind of playing horse, so to speak. Some of this dissertation in here seemed rather strange to me, where Mr. Alberts says that the Larson application was not filed in the name of the true inventor, in effect, because they didn't think that was the smart thing to do. That was about the substance of his letter.

Q. Well, he filed a joint invention and it should have been a sole invention?

1372 A. No, he filed a sole invention.

Q. And it should have been a joint?

A. Just a minute, if I may point out.

Q. All right.

A. Mr. Alberts says in his letter:

"Because Snap-On Tools Corporation did not want to become involved in a joint invention with Larson at that time in view of the provisions of the agreement of September 28th, 1938 for reversion of all patent applications to Larson or his nominee, Precision Instrument Manufacturing Company, it was decided at that time not to file a joint application."

It was a mere matter of expediency when Mr. Alberts decided who was the inventor, as I read his letter. That is what I am refegring to. And then on the next page he was asking Automotive to acknowledge validity of a patent that would issue on an application, a joint application that hadn't even been filed, which seemed perfectly absurd to me.

Q. Do you mean it was absurd to ask for recognition of claims that were not yet in being?

A. No, that wasn't the point.

1373 Q. Oh, the question is whether it was filed or not filed?

A. No, that wasn't the point.

Q. Go ahead and tell me what the point is.

A. The point was, there was no reason for Wacker or Automotive acknowledging validity of any of Larson's applications. That is the point. It was absurd on its face to me.

Q. I might inject a question. I will let you answer. Was it just as absurd for Mr. Wacker to ask Precision and Snap-On to recognize the validity of claims of the Larson application which were not involved in the Interference?

A. Certainly.

Q. It was just as absurd?

A. No, it was perfectly sound.

Q. That is because the request was made by Wacker?

A. Is that being facetious?

Q. A little bit.

A. Well, I don't answer the question, may your Honor please. If you want an answer I will be glad to answer any questions.

Q. I would like, upon second thought, to know

1374 why there was the demand or insistence that Snap-On and Precision recognize the validity of claims which were not involved in the Interference having to do with another subject matter and not only those claims, but claims which might be written which were not then in being?

A. There was nothing unusual at all about that, Mr. Freeman, and certainly not in this situation, as I understand it and as it has been related to me by Mr. Fidler. There was common subject matter between the applications in Interference. It is a very common thing to have a concession of priority when a settlement is made, to have the party conceding priority acknowledge validity of any claims that may issue in that patent. So far as this other Larson patent is concerned, I understand from Mr. Fidler that there was some kind of an attempt to add claims. I don't know just what the situation is. I have never read those claims before, and that Automotive may have had

an application which could have gotten into Interference. That is the best answer I can give because Mr. Fidler was more familiar with that situation than I was. I never examined these applications. I was taking Mr. Fid-
1375 ler's word for it, and that is what I recollect Mr. Fidler told me on that situation.

Q. Well, isn't it true, so that we get the sequence of events, that after you received Mr. Alberts' letter of December 17th you then set about to prepare the notice of taking testimony and had the wives of Larson and Carlsen served by the marshal or other bailiff?

A. That is right, because he had served notice on us to take it or go ahead, and so we were going ahead.

Q. That was the letter of December 17th of Mr. Alberts which you said was the serving of notice upon you?

A. Correct.

Q. And then when you received Mr. Alberts' letter of December 18th, which was a copy of the letter that he had written to Mr. Hobbs with respect to the power of attorney, you then sat down and wrote your letter of December 19th, Defendants' Exhibit No. 68, is that correct?

A. Yes, and in view of his withdrawing and trying to appoint Mr. Hobbs as attorney—

Q. You had already decided to take testimony, had you not?

A. Oh, yes.

1376 Q. And you had already accepted Mr. Alberts' letter of December 17th as your notice to go ahead?

A. Oh, yes.

Q. Was there any need for writing a letter calling attention on December 19th to the testimony of Larson as not being the whole truth?

A. I have already explained that. I can add nothing to it or subtract anything from it.

Q. You had already decided to go ahead with your Interference?

A. Why, of course, I had; and I wanted Mr. Alberts to appoint an attorney whom we could serve the notice on.

Q. Now, there has been so much said about appointing an attorney upon whom you might serve. You could have served Larson, could you not?

A. The Patent Office rules provide that notice must be served upon the attorney and if no attorney then on the applicant. I am just following the rules.

Q. Much has been said here about Mr. Alberts appointing an associate attorney. You knew and know now that Mr. Larson could have appointed an attorney any time he wanted to and Mr. Alberts' power of attorney would have been automatically revoked by the Patent Office?

1377 A. That is true, and I know now that Mr. Alberts wrote that he was doing what he could to stiffen Mr. Larson's position so that he wouldn't leave Snap-On holding the bag, contract or no contract, which is about the words that Mr. Alberts used.

Q. Was there anything wrong in that?

A. Why, of course there was, Mr. Freeman, if you are asking me. When Mr. Alberts knew that there was perjury committed and was stiffening his back and preventing him from giving a concession of priority, are you asking me that question?

Q. Yes, I am.

A. Yes, I certainly do say that it was wrong to haggle for an agreement.

Q. Don't you think a man, even though he has committed perjury, is entitled to have his rights protected?

A. Oh, absolutely, but he hasn't got a right to haggle for an agreement. His attorney hasn't, based on that perjured testimony.

Q. I agree with you on that.

A. And Mr. Alberts writes me—let us go back to his letter of the 28th—

Q. Go ahead. It is in the record.

1378 A. I want to answer this now because I think Mr. Alberts' letter to me of December 19th is a whole answer to this situation that you are interrogating me on at this time.

Q. Are you talking about his letter of the 19th which is in response to your letter of the 19th?

A. He is writing, and I am answering your question as to whether it is proper—yes.

Q. Tell me which letter.

A. Exhibit No. 76, Mr. Alberts' letter of December 19th. I don't mean to speak so fast, Mr. Freeman.

Mr. Alberts wrote me on that date and he said:

"Without qualification the only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28th, 1940."

That was not true. Larson had admitted perjury. He says:

"That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself and Larson. The only charge of wrongdoing thus far is at the instance of the self-
1379 confessed wrongdoer."

That wasn't true. And he says further:

"I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker."

In the first place, his words were not uncorroborated to Mr. Alberts, because Larson had confessed and, in the second place, we agree that his—

Q. You are operating on the basis that Larson had confessed. You are talking about what you know now.

A. You are asking me—

Q. I would like to get you back of the time of either December or November, 1940.

A. You asked me if he had done right, and I am answering that question.

Q. As of today?

A. Yes, in the light of my knowledge today, and I would like to answer.

Q. Go ahead.

A. Then he challenges me, notwithstanding that he knows this testimony is perjured, and he is haggling for an agreement and he says:

1380 "Present corroboration of competent type with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority."

He knew we were entitled to an award at that time, and I say it is wrong, since you asked the question.

Q. Now that you have testified as to what you know now, you knew that Mr. Alberts had informed your office that if he found that Larson had falsified or that Larson's story wasn't correct, that he would withdraw as attorney, do you recall that?

A. Yes, I was told that.

Q. And you knew then that Mr. Hobbs took over on November 29th, 1940, at which time Mr. Hobbs wrote to Mr. Fidler. You knew that, didn't you?

A. Yes, that was in connection, I understand, with the

settlement. I think Mr. Fidler made that plain to me. Mr. Alberts did not withdraw.

Q. And you dealt with Mr. Hobbs, and when I say you, Mr. Lindsey, I mean your firm, from November 29th up until at least December 18th, on the basis that Mr. Hobbs was then representing Larson and Precision, did you 1380½ not?

A. Now you have got to divide the two, Mr. Freeman, because as to the negotiations, the settlement, yes; as to the Interference, no, as evidenced by the fact that Mr. Alberts on December 2nd, days after you say he said he would withdraw if he found it true, entered into a stipulation with Mr. Fidler showing that he was still attorney of law and recognized that he was attorney of record in the Patent Office. And on December 18th we served notice of taking depositions on Mr. Alberts, and you may recall that Mr. Hobbs wrote Precision at the time and stated, that is, on December 19th, that we had properly served the notice on Mr. Alberts rather than on Mr. Hobbs.

So that I say the record clearly shows that Mr. Alberts was representing Larson in the Interference and Mr. Hobbs was only in the picture in connection with the settlement.

Q. And you know further that unless there was something wrong with the Interference dates of Larson, there wasn't any need for any kind of a settlement. You know that, do you not?

A. No, they could have conceded priority. That is 1381 what we wanted.

Q. You wouldn't have taken a concession of priority if you knew that Larson was the true and first inventor, would you?

A. Why not?

Q. Would you do that?

A. If Larson was? Of course not. Of course not. I know well enough that if they would give us a concession of priority, I would take it. Why shouldn't I?

Q. You wouldn't take a concession of priority when you knew the other man was the inventor?

A. I didn't know it. I didn't believe he was. I suspected he wasn't.

Q. And you knew that the other man—and when I say the other man I mean Larson—had put in testimony with

respect to his dates which were way ahead of any dates put in by Zimmerman.

A. Sure, and I suspected they were faked.

Q. And you still want to tell us that you distinguish between Mr. Alberts technically serving as counsel for Mr. Larson in the handling of the Patent Application and Mr. Hobbs of the firm of Haight, Goldstein and Hobbs, serving as counsel in connection with the settlement?

1382 A. I would say that that was the division. Mr. Alberts had signed this stipulation after this meeting with Thomasma; and we had served notice upon him. I don't think there is any question about that, Mr. Freeman. I don't know what you are driving at.

Q. Do you recall or have you had an opportunity to see the letter of Mr. Alberts to your firm of December 3rd, 1940, Defendants' Exhibit No. 71?

A. I don't recall seeing that letter, Mr. Freeman.

Q. I hand you a photostat. I do not have the original.

A. I may have seen it.

Q. Do you mind reading the first paragraph of that letter out loud?

A. "This will confirm my announcement at the conference held in your office on November 28th, 1940 with Messrs. Wacker, Allen, Thomasma and Joseph Johnson that I would withdraw as counsel for Kenneth R. Larson in the above-entitled proceeding in view of an alleged contradiction in the Larson testimony. This alleged contradiction indicates that a conflict of interests may develop between Snap On Tools Corporation and the interests represented by Kenneth R. Larson."

1383 What was your question, Mr. Freeman?

Q. I am just asking you whether or not that letter didn't confirm what Mr. Alberts told you or told your office on November 28th, 1940 about his withdrawing?

A. No, sir.

Q. Even though he didn't formally go through the formality of withdrawing?

A. No, it doesn't confirm.

Q. And you dealt throughout your negotiations on the basis that Mr. Alberts was the attorney of record, is that correct?

A. With respect to the interference, that is correct.

Q. And you distinguish or segregate the Interference proceedings from the settlement proceedings?

A. It is just the same. May your Honor please, if this case could be settled—and there is no chance of settling it—and Mr. Freeman engaged Mr. George Wilkinson to try to settle with us this lawsuit, and Mr. Wilkinson had made no appearance, we would then be supposed, according to Mr. Freeman's understanding and Mr. Alberts' veiw, to serve all our papers on Mr. Wilkinson even though he was not of record in the case. That is my understanding. Now, I would like to answer a little fuller. I

1384 didn't get to explain one of my answers which might be subject to misinterpretation. You asked me if this paragraph which I read confirmed what Mr. Alberts had said at the meeting, and I said no.

Q. With respect to his withdrawing.

A. No. You asked me if it confirmed what Mr. Alberts said at the meeting with respect to his withdrawing, and I said no. This letter says:

"This will confirm my announcement that I would withdraw as counsel."

What Mr. Alberts said, according to his own testimony in this case, was:

"If I find this to be the truth, I will withdraw."

It was not an announcement of withdrawal and, of course, he never announced that he was going to withdraw, because he never announced that he didn't find that it was the truth.

Q. Was there any reason whatsoever for a settlement unless Mr. Alberts and Snap-On had found that Larson had falsified and, putting it in reverse, that the Thomasma story was correct?

A. Oh, yes, plenty of reason.

1385 Q. In other words, you think the man with the earlier dates, with the prior models, assuming that they are truthful, should concede priority to somebody who was subsequent as an inventor, pay over money, assign an application and agree practically to go out of business, even though that party, after having gone through all the expense and labors of an Interference proceeding, could have prevailed?

A. Are you asking me a question or making an argument, Mr. Freeman?

Q. You know what I mean. You go ahead and answer.

A. Do you want me to answer that question?

Q. Yes.

A. Of course, you haven't painted the picture as it actually existed, Mr. Freeman.

Q. Well, you modify the painting and go ahead and paint.

A. You see, Zimmerman was the prior applicant in the Patent Office, and the presumption is that the first to file was the first to invent. Larson became the junior party in the Interference. He was obliged to take his testimony first, and he did that. At any time he could have conceded priority. While he had good proofs on the face of them, we were strongly suspicious of them in view
1386 of Thomasma's statement and other matters. We told the attorneys on the other side we would take a concession of priority, something that we were entitled to. When they came to us, that isn't what they offered. They wanted to protect a business, they wanted to protect these 6,000 wrenches which they had on order.

We suspected at the time, and Mr. Fidler and I discussed it, that they no doubt had another wrench that they were ready to put on the market. That has been confirmed in this court room. They came to us with a proposition of settlement. We supposed they weren't interested any more in the wrench. We were still suspicious there was still something wrong with the case. Thomasma's story may not have been entirely accurate, with all these nine witnesses testifying, and all these proofs, even if this drawing was not clearly proved or if something was wrong with it, there may have still been sufficient in the testimony to warrant a prosecution of the Interference, though we doubted that. There was the question of abandonment of invention which Mr. Fidler discussed with me in regard to this matter, and there was every reason why when you came to us, that it, Larson came to us with a proposi-
1387 tion to settle; why we shouldn't have settled. We weren't convinced by any measure of means that Larson's proofs were true. We didn't think they were. There was no reason why we shouldn't take a concession of priority, and there was nothing wrong in taking it, under any theory of logic, fact or law, that I know of.

Q. Well, when you talk about abandonment or abandoning an experiment and some of these technical defenses, you will agree with me that even though Larson might have lost on some of those technical defenses he was still entitled to his day in court.

A. Why, of course, he was, but not after his attorney had found that he had perjured himself. He was entitled to it. I wouldn't have anything to do with that kind of a situation. If I knew a man stole a cow I wouldn't advise him not to return the cow and I wouldn't advise him to make the owner of the cow pay for its return, I wouldn't do that, Mr. Freeman, and I don't believe you would.

Q. But you would defend that individual if they asked him to return two cows, would you not?

A. Oh, yes, but if all I had to do was to give back the cow I would certainly give back the cow. I wouldn't
1388 have him haggle for another cow in substitute for the cow I had stolen. That is my position.

Q. Well, if there wasn't anything that you wanted other than a concession of priority, which was the cow from your example, why was it that you asked for second Larson application?

A. I have already explained that they wanted the license and they wouldn't pay royalty. We were looking for some other consideration, which was perfectly proper, and besides—

Q. Then why was it that you wanted this recognition of validity running from Snap-On to Automotive?

A. Snap-On was a party to the Interference. There wasn't anything unsual about that. I have settled dozens of them on that basis.

Q. You say Snap-On was a party?

A. Well, they owned the application.

Q. Then when you condemned Mr. Alberts for holding up the settlement when Larson wanted to settle, you are now telling us, are you not, that Snap-On had a right to be protected?

A. Of course, they had a right to be protected, but my point is that they knew perjury had been committed,
1389 that Larson had no standing in the Patent Office whatsoever, and notwithstanding they knew there was perjury—Snap-On I am speaking of, as well as Mr. Alberts—they were haggling for a consideration from Wacker, from Automotive, and I say that when they found out that that testimony was perjured and they were convinced that they couldn't win in the Patent Office they had no business in doing any haggling about terms. They should have either abandoned the application, as provided for in the

Patent Office rules, or granted a concession of priority. A concession was not necessary at all, Mr. Freeman.

1390 Q. Were you the one that made the request for the Larson second application? And I use the word "you" to mean you personally.

A. I couldn't say whether I thought of it or not and probably not because I don't think I knew it was in existence when the question arose.

Q. Now, Mr. Lindsey, you agree with me that after Mr. Hobbs entered the picture and had talked to Mr. Fidler on December 2, 1940, that thereafter whatever holding up of the reporter transcribing the testimony in the Interference was done by mutual consent of both parties?

A. Yes, that was my understanding, that Mr. Fidler—

1391 Mr. Freeman: Read the question and answer, please.

(Record read as heretofore recorded.)

The Witness: (Continuing)—agreed to that.

Mr. Freeman: Q. So, when you became somewhat bothered upon receipt of Mr. Alberts' letter of December 17th, you were really referring back to the time prior to December 2, 1940, were you not?

A. Yes, his letter of the 17th and his notice of substitution.

Q. And did Mr. Fidler, when you conferred with him with respect to the court reporter transcribing the notes, tell you that Mr. Alberts had written to the court reporter and had sent a copy of his letter to the court reporter to your office?

A. Yes, I remember that letter.

Q. And I am handing you such a letter.

(Handing document to witness.)

A. Yes, I remember that letter.

Q. And you were still complaining about the holding up of the transcribing to Mr. Alberts, is that correct?

A. At what time?

Q. That is holding—in other words, you com-
1392 plained on December 9th about the court reporter not having transcribed the record promptly?

A. That was the 19th, wasn't it?

Q. December 19th.

A. December 19th.

Q. Yes, your letter to Mr.—

A. Oh yes, that is right but at that time Mr. Alberts was trying to shove the Interference off on Mr. Hobbs.

Q. We are talking about the court reporter.

A. All right. Let me get your question.

Q. At the time you wrote Mr. Alberts on December 19th, whatever complaint you had with respect to the court reporter and Mr. Alberts' responsibility for the court reporter, that was all for a time prior to December 2, 1940 when Mr. Hobbs entered the picture, is that correct?

A. That is correct, plus his responsibility to see the reporter had gotten it out after we had served notice to take depositions.

Q. Now, had you made any demand to Mr. Alberts after all negotiations broke off on December 18th that he instruct the reporter to go ahead and get the record completed?

A. No, I think not.

1393 Q. And the first demand that you served on Mr. Alberts for the rest of the transcript was on December 18th, when you were back in the Interference, so to speak, is that correct?

A. I think that is correct.

Mr. Freeman: We offer in evidence as Defendants' Exhibit 103, the letter from Mr. Alberts on November 19, 1940 to the reporter, Thomas L. Raftery, and I read that letter.

(Defendants' Exhibit No. 103 was thereupon read to the court by Mr. Freeman.)

The Court: If there is no objection, it will be admitted. What is the date of that?

Mr. Freeman: That is November 19, 1940.

The Court: November?

Mr. Freeman: 19th, 1940.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT No. 103.)

Mr. Freeman: Q. You talked to Mr. Fidler on the morning of November 4th when Mr. Fidler was going to appear before Judge Barnes with respect to certain certifications of questions involved in the Interference,

1394 that is correct, is it not?

A. Yes, I think that was the date; at least, he was about ready to go before Judge Barnes on this motion to compel witnesses to answer questions and I presume that was the date.

Q. Did Mr. Fidler tell you on that morning that he had spent several hours the preceding evening with Mr. Thomasma at his home where Wacker was present and where there were other witnesses present?

A. As I recall, he didn't. He may have mentioned it but I don't have any recollection of it.

Q. Did he tell you anything about Mr. Travis having telephoned Mr. Wacker between 1 and 2 o'clock in the morning on November 4th to report Thomasma would stand up or would testify?

A. I have no recollection of that whatsoever, Mr. Freeman.

Q. What did Mr. Fidler tell you with respect to Krichiver and Thomasma's efforts to sell stock to Precision?

A. I am sure there was nothing up to that time about that matter.

Q. Now, what was this motion Mr. Fidler discussed with you on the morning of November 4th that was to be presented later in the day to Judge Barnes?

1395

A. I know now but I didn't know at the time what the question was.

Q. Do you know now?

A. Oh yes.

Q. It had to do with what?

A. Claim interpretation.

Q. What did you learn from Mr. Fidler with respect to the Interference between November 4th and December 9th when you entered the picture, so to speak?

A. I don't think I really learned anything much about it during that period. I had been over to Grand Rapids for almost two weeks in connection with the trial of this case, as I recall.

Q. Had you learned anything that warranted you giving to Mr. Hobbs a 24 hours to take it or leave it proposition?

A. You mean before—

Q. Between the 4th of November and up to the 11th of December when you called Mr. Hobbs, what had you learned?

A. I think I have already said that I recall there was a telephonic conference between Mr. Hobbs and Mr. Fidler in which Mr. Fidler had turned down Mr. Hobbs' proposal.

1396 Will you read the question, please?

(Pending question as above recorded read by reporter.)

The Witness: Furthermore, I have not testified that I gave Mr. Hobbs a 24-hour proposition. If I have, I didn't intend to do so.

Mr. Freeman: Q. You sent Mr. Hobbs a copy of your letter of December 19th, Defendants' Exhibit 68, to Mr. Hobbs, did you not?

A. As I recall, I did. May I have that?

(Document handed to witness by Mr. Hibben.)

Q. And you had at that time received Mr. Hobbs' letter that he was not going to accept the power of attorney and that he would not proceed in the Interference, had you not?

A. Which letter was that, Mr. Freeman?

The Court: The letter of December 19th.

The Witness: December 19th when I had written my letter of the 19th, you mean?

Mr. Freeman: Q. Yes, when you had written your letter of the 19th to Mr. Alberts.

A. I don't think I had, Mr. Freeman. That is Mr. Hobbs' letter of the 19th, Plaintiff's Exhibit 34, in

1397 which he says, "I told Mr. Larson a week or so ago—", is that the letter you have in mind?

Q. Yes.

A. No, I think I received that on the 20th, Mr. Freeman.

Q. Well, you were serving notice on Mr. Alberts because I think you testified that Hobbs would not accept responsibility or the power of attorney in the Interference case, is that correct?

A. That is correct.

Q. And the letter of December 19th had to do with the Interference, your letter of December 19th, Defendants' Exhibit 68?

A. That is correct.

Q. Now, just what was your reason in sending Mr. Hobbs a copy of that letter?

A. Well, now, I think my letter of the 18th, probably, with respect to the demand answers that question.

I had sent a copy of my letter of December 18th to Mr. Alberts with respect to the taking of the testimony to Mr. Hobbs and in my letter to Mr. Hobbs of December 18th, Plaintiff's Exhibit 31, I said to Mr. Hobbs:

1398 "Merely to keep you fully advised, I am enclosing a copy of my letter of this morning to Mr. Alberts

together with a copy of the demand and notice to take depositions."

Then I said:

"I am sorry it is necessary to proceed but, in view of the excessive demands of Snap-On, and, particularly, in the light of all the circumstances, there is nothing else for us to do."

I wanted to advise Mr. Hobbs what we were doing.

Q. You were then out of the settlement stage and back into the interference stage and you were looking to Mr. Alberts in that respect, is that correct?

A. With respect to the taking of the depositions, that is correct.

Q. And that was prior to December 19th that there was the stepping out from the settlement stage onto the interference stage, is that correct?

A. That is right.

Q. And I now ask you then why, what your purpose was in sending a copy of this letter of December 19th addressed to Mr. Alberts with a copy for Snap-On to Mr. Hobbs?

1399 A. As a matter of courtesy.

Q. Courtesy?

A. Of course.

Q. Even though you knew that he was out of the case?

A. Why, of course, as a matter of courtesy, I had been keeping him advised.

Mr. Freeman: That is all.

Redirect Examination by Mr. Smith.

Q. Mr. Lindsey, I believe in your testimony on cross examination that you were asked by Mr. Freeman whether or not you had ever made a demand on Mr. Alberts with reference to payments of money to be made from Snap-On to Automotive and I think you answered "No." Do you recall a conversation which you had with Mr. Alberts on December 11th with reference to those matters?

A. I haven't a clear recollection of that conversation at all. I see this—

Q. I show you a memorandum prepared by Mr. Harry C. Alberts, dated December 11, 1940, which is in evidence as Defendants' Exhibit 72, and ask you if that refreshes your recollection?

1400 (Handing exhibit to witness.)

Mr. Freeman: That is the Alberts memorandum of December 11, 1940?

Mr. Smith: Yes, right.

The Witness: A. I have no clear recollection of this conversation. I didn't have any clear recollection when Mr. Alberts was testifying and I saw a copy of this. I don't recall of any particular telephone conference with Mr. Alberts. I may have had one or two but I have no recollection of this one.

Mr. Smith: Nothing further.

The Court: All right, call your next witness.

(Witness excused.)

Mr. Smith: If the court please, on behalf of Mr. Fidler, I make the same motion I made for Mr. Lindsey, that is: Mr. Fidler desires to withdraw for the purpose of testifying.

The Court: Let the record show he has withdrawn for the purpose of testifying.

1401 RAYMOND E. FIDLER, called as a witness by Automotive Maintenance Machinery Co., being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. Your name and address, please?

A. Raymond E. Fidler. My home is at 9534 Lawndale, Skokie, Illinois, and I am temporarily residing at 6200 North Kenmore Avenue.

Q. What is your profession, Mr. Fidler?

A. Attorney and, particularly, patent law.

Q. And with what firm or of what firm are you a member?

A. Davis, Lindsey, Smith & Shonts.

Q. How long have you been a member of that firm?

A. I came with that firm November 1, 1925 and became a member about the 1st of the year, 1935.

Q. And how long have you been practising as an attorney, either patent or otherwise?

A. For about twenty years. Prior to that time, I was associated with the Westinghouse Air Brake Company at Wilmerding, Pennsylvania, and that was more or less house

attorney work in connection with patent applications,
1402 and so forth, for about five years there.

Q. Now, as a member of the firm of Davis, Lindsey, Smith & Shouts, what is the fact as to whether you have largely represented Frederick G. Wacker and the Automotive Maintenance Machinery Co. in its patent matters for some time?

A. I have, and, particularly, since about the year 1927, practically all of the patent matters except for such times I would call others of my associates in for consultation.

Q. Now, as attorney for Automotive Maintenance Machinery Co., you filed the so-called Zimmerman application in the United States Patent Office on November 22, 1937, which was given serial No. 175863, is that true?

A. I did.

Q. And subsequently, on May 31st, 1938, you also filed a second Zimmerman application which was given Serial No. 210869?

A. That is correct.

Q. Now, what was the subject matter of both of those applications?

A. They both covered what I have always referred to as a torque measuring wrench. The first application
1403 covered the originally developed form by Automotive, and the second covered improvements on that form. Both of the applications covered a wrench of the type where it might be applied to the work, the nut or whatnot, and force applied by the operator from any point or in any way he might grasp the wrench without affecting the reading of the wrench.

Q. Now, who was the owner of the subject matter of those applications at the time the applications were filed?

A. Automotive Maintenance Machinery Co.

Q. As what, assignee of Zimmerman?

A. As assignee of the inventor Zimmerman.

Q. Now, at the time you filed these two applications, the first one November 22, 1937, and the second May 31, 1938, were you advised as to whether Automotive was then engaged in manufacturing the subject matter of those applications?

A. I understood that they were manufacturing and that they were manufacturing, I believe, at that time mainly for Snap On Tools Corporation.

Q. Now, subsequent to the filing of those two applica-

tions, were you advised of the fact that Snap-On was
1404 selling torque wrenches or similar torque wrenches which were being manufactured by someone other than Automotive Maintenance Machinery Co.?

The Witness: May I have the question, please.

(Pending question read by the reporter.)

A. Yes, I was so advised by Mr. Wacker of Automotive, I believe it was sometime during the year 1939, around about the middle of the year, and at that time an effort was made to secure one of these competitive wrenches and that was done and the competitive wrench, as I remember, was in a box which bore the name of Snap-On Tools Corporation.

That wrench embodied the same principles as the wrench that Automotive had been making and supplying to Snap-On and the same principles that were disclosed in the applications that you referred to a moment ago.

Mr. Smith: Q. Now, after you had secured the wrench and determined the fact that it was in a box with the name Snap-On on the outside of it, what did you next do?

A. I think that I advised Mr. Wacker of the similarity of that wrench to his wrench.

Q. Were you advised as to the name of the manufacturer of the wrench which Snap-On was selling?

1405 A. I think that I asked Mr. Wacker to secure such information as he might respecting the wrench and its source of manufacture and it is my recollection that he did inform me that he was advised that it was made by Precision Instrument Manufacturing Company, of Des Plaines.

Q. Now, in connection with that information, did you make any effort to secure further information with reference to the manufacture of this wrench?

A. I don't recall that I made any effort myself.

Q. Well, did you make any effort to have anybody else secure such information?

A. I think I told Mr. Wacker to keep after such information as he might be able to obtain because we wanted the facts in respect to the matter and I think that, as I recollect it, he got some information or passed on to me some information to the effect that one of our employees, one of Automotive's employees, had something to do with that wrench.

Q. And what was the name of this employee?

A. Well, I later learned that it was Mr. George B. Thomasma. I remember—I am sure I didn't know definitely because about the time that the Interference was declared, I wrote a letter to Mr. Wacker in which I
1406 referred to the other party in the Interference as Kenneth R. Larson who was probably the Automotive employee who had gone to Snap-On.

Q. And that letter to which you have just referred is Defendants' Exhibit 79, is that correct?

(Handing exhibit to witness.)

A. That is correct.

Q. Now, did you have any examination made in an effort to determine whether or not George B. Thomasma was one of the persons associated or connected with the Precision Instrument Company at any later date?

A. I did. After the Declaration of the Interference which, I believe, occurred about in October, 1939, and after I had written this letter to Mr. Wacker, he sent to me a Dun & Bradstreet report on Precision Instrument Manufacturing Company, and I also had the records over here in the City Hall checked with respect to Precision and I learned that a George B. Thomasa (T-h-o-m-a-s-a), not Thomasma (T-h-o-m-a-s-m-a), was one of the incorporators and a director and stockholder of Precision and, following that through, I learned shortly after that, I believe it was around sometime in November, 1940, that the party was or must be George B. Thomasma, our em-
ployee.

1407 Q. 1940 or 1939?

A. 1939.

Q. Now, the Interference No. 77565 was declared by the Patent Office on October 11, 1939, is that correct?

A. That is correct.

Q. Now, following the declaration of the Interference, did you confer with Mr. Wacker regarding the fact that such an Interference had been declared?

A. Yes.

Q. Just tell us what the purpose of your conference was and what the conclusion of it was. Do you remember?

A. I don't believe I conferred with him right away. I think I wrote him a letter advising him of the declaration of the Interference and, in accordance with the practice of the Patent Office, I believe they had sent him notice of such declaration which he sent to me and, in advising him of

that, I informed him of what the next step in the matter was, namely, the preparation of preliminary statements and, particularly, the collection of material upon which the dates to be set forth in the preliminary statement could be based and I think that in that letter I informed him, the October 13th letter, of Snap-On's connection with
the Interference as assignee which, of course, would
1408 be shown by the notice of the Interference which Mr. Wacker secured and I think I made some statements to Mr. Wacker in the letter respecting the preliminary statement where I expressed my views, and so forth, as to the situation.

Q. Now, for the purpose of the record, will you just explain briefly the procedure of the Patent Office having to do with the filing of preliminary statements following the declaration of an interference?

A. In declaring an Interference, the Patent Office selects claims appearing in the two Interfering applications and includes such as the Patent Office considers necessary to determine the issues, in what is called the Declaration of Interference, and, in so declaring the Interference, they state that a preliminary statement should be filed by both parties within a certain time.

And in that preliminary statement, the Patent Office requires that the parties set forth when they disclosed the invention to others, when they first made drawings, when they first made a written description, when they first built a full size device, and when they first successfully reduced
to practice that device, and, following the filing of
1409 those preliminary statements, the Patent Office sets a time for the filing of any motions that any of the parties wish to make.

Now, those motions may take various forms such as, for example, one party thinks that the other cannot make the claims in their application, they don't read on the disclosure, or something like that, they move to dissolve the Interference on that ground.

Also other motions are ones in which if one party has another application or has in the application in Interference claims or subject matter which is common to the Interfering application which he wishes to contest in the Interference, he brings a motion asking that his application be amended to include those claims and that they be included in the Interference.

In other words, under the Patent Office practice, they endeavor to take care in one Interference proceeding of all matters and issues that should be taken care of between the parties at that time.

What I mean by that is this: If I have another application pending which the other party does not know about, it is my duty to bring forth that application if it discloses subject matter which is disclosed in the subject matter of the other party and which I believe is patentable sub-
1410 ject matter and may be the subject matter of a patent.

Q. Now, up to the time that the date is definitely set for the hearing on the Interference, is either party aware of the dates alleged by the other party in the preliminary statements?

A. The preliminary statements are not open to the inspection of either party until after all motions have been disposed of in the Patent Office and they are ready for the taking of testimony.

Q. All right. Now, in this case, following the declaration of the Interference, a preliminary statement was filed by Mr. Alberts on behalf of Larson on or about November 13, 1939, and you filed a preliminary statement on behalf of Zimmerman on or about November 10, 1939, is that correct?

A. That is correct.

Q. And following the filing of both of these preliminary statements by the respective parties, there were certain motions such as you have described which took place in this case, is that correct?

A. That is correct and, as a result of which, the Interference was reformed requiring the filing of new
1411 preliminary statements.

Q. Up to the time that the Interference was reformed, had you had made available to you the dates which were cited in the preliminary statement filed by Mr. Alberts?

A. No.

Q. Now, after the Interference was reformed, then Mr. Alberts filed a second preliminary statement on behalf of Mr. Larson on or about June 27, 1940, and you filed a similar second preliminary statement on behalf of Zimmerman on or about July 12, 1940, is that correct?

A. That is correct.

Q. Now, when did you first see a copy of either the

first or second preliminary statement filed by Mr. Alberts on behalf of Larson?

A. As I recollect it from refreshing my memory from my records, I first received a copy of Larson's second preliminary statement about the 3d or 4th of August, 1940, and I then considered whether or not I had the right to see the first preliminary statement because one of the counts in the Interference as reformed was the same as originally declared, and I thought I was entitled to have the preliminary statement with respect to that count and about August 12th, I believe, I secured a copy of
1412 the original preliminary statement— that is 1940.

Q. Now, after you had received the preliminary statements and the dates were made available to you as the dates on which Larson claimed he had done certain things, what did you do next?

A. Well, I, as I remember it, I wrote to Mr. Wacker and I expressed great surprise at the dates that had been alleged by Larson in his preliminary statement, and stated my views to Mr. Wacker quite fully, particularly because I had been quite frank in stating my views previously in the matter to the effect I didn't think that Snap-On intended to contest this Interference seriously.

Q. I hand you Defendants' Exhibit No. 87, dated August 5, 1940, addressed by you to Automotive Maintenance Machinery Co., attention Mr. Wacker, and ask you if that is the letter to which you have just referred (handing exhibit to witness)?

A. That is the letter and in this letter I advised Mr. Wacker to the effect that in situations of this kind I think that it is advisable to make thorough investigation and asked in effect for him to give some consideration to that matter which he did and instructed me to make an investigation.

1413 Q. Now, whom did you secure to make that investigation?

A. Mr. John A. Wise.

Q. That is the Mr. Wise who testified on the stand previously?

A. That is correct.

Q. What were the instructions or information which you gave to Mr. Wise?

A. I can't recollect everything in detail that I told

him but I know I did tell him the situation, as I understood it to be up to that time.

I explained to him that Automotive had started out with the development of a line of torque wrenches and they were a particular type of wrench, and we had become involved in an Interference and that the Interferenee was with a man by the name of Kenneth R. Larson of Precision Instrument Manufacturing Company of Des Plaines, Illinois, and that George B. Thomasma, one of Automotive's former employees, was also a director of that company and that Automotive had dealt with Snap-On in respect to a very similar kind of wrench and that now the wrench involved apparently was being made by the Precision Instrument Manufacturing Company for the Snap-On Tools Corporation and that it seemed to me a very unusual
1414 sitiuation, that there must be something wrong.

I, knowing of Automotive's dealings with Snap-On, couldn't conceive of Snap-On dealing with Automotive in respect to that wrench if they had their own inventor who had conceived that wrench two or three years before Automotive had conceived it, and I asked him to check Thomasma's activities and Larson's activities and try to determine the fact as to when and where and why that wrench originated and whether or not Snap-On had any part in the picture.

Q. Did you take any part in directing the methods to be used by Mr. Wise in securing the information you asked for?

A. I did not.

Q. Now, about when was it that you first requested Mr. Wise to make an investigation in this case?

A. I think that Mr. Wacker telephoned me and we discussed the matter and it was within a few days after my letter of August 5, 1940.

Q. Now, the taking of testimony on behalf of Larson in Interference 77565 began October 24, 1940, is that correct?

A. That is correct.

1415 Q. And with certain interruptions, it continued up until November 4, 1940?

A. That is correct.

Q. Now, as of the date of the beginning of the taking of those depositions on October 24, 1940, had Mr. Wise made any reports to you of progress which he was making

in connection with his investigation and, when I say reports, I mean either written or verbal for the purpose of this question?

A. He made no written reports but he made many verbal reports and, I may say, at that time he had not gathered for me information which would establish the fact or the facts that I was seeking. He had secured information respecting Mr. Larson and his activities and had secured some information respecting Mr. Thomasma and Mr. Carlsen and information respecting some of the activities of Larson and Thomasma but nothing definite that I could say definite respecting the times of working out the wrenches.

1416 Q. Let me ask you right here, what is the fact as to whether or not there was anything unusual in Mr. Wise's failure to make written reports to you in this case?

A. None whatever.

Q. Had you or your firm employed Mr. Wise previously in the making of investigations in other cases?

A. Several years; practically all the time that I had been there, as I recollect.

Q. And what is the fact as to whether it was his usual practice not to make written reports?

A. It was his practice not to make written reports.

Q. Now, did you handle the cross-examination of the Larson Interference witnesses during the taking of the testimony from October 24 to November 4, 1940?

A. I did.

Q. What was the order of proof which was followed in the taking of the Larson depositions in the Interference?

A. Well, I think that they started in with the foundry man first.

Q. He testified to what? tell us quickly.

A. With respect to the making of castings, and I don't remember in detail just after that what the order

1417 was; but all of what I would call the corroborating witnesses testified first, and then Mr. Larson last.

Q. You heard Mr. Alberts testify on the stand in this case, did you?

A. Yes.

Q. You heard Mr. Alberts describe your cross-examination in the Interference proceedings as a searching cross-examination?

A. Yes.

Q. Would you say that that was an accurate description of your cross-examination?

A. I would.

Q. Now, what were your reasons, if any, at that time in conducting the kind of an examination which Mr. Alberts and you both described as being searching?

A. Well, the story that I have already related, in respect to the relationship between Automotive and Snap-On, and the relationship between Thomasma and Precision, and the relationship between Precision and Snap-On had led me to believe that such a thing as alleged in Larson's preliminary statement must be wrong somewhere.

And when I heard witnesses testify as to the story
1418 that I heard, a straight forward story, with records and models, I still have that feeling in me, that there was something wrong; and I was trying in every conceivable way to find the loophole if there was any.

I also found some of the witnesses somewhat evasive; there were objections to questions on cross-examination wherein I was trying to search out this relationship, about the stockholders, and so forth; because in going ahead and proving that I might have to call stockholders, and anybody that knew anything about it.

And as the result of all that, it was most difficult for me to give up in cross-examination, where I was getting stopped at every turn.

Q. Had you secured any information with reference to this man Carlsen at the time of that Interference?

A. Yes.

Q. What was the information that you had secured about him, and how did you get it?

A. I had been informed that his name was not Carlsen, and that it was Palis, or something like that; and that he had had some connection with a beauty parlor, or he bought a beauty parlor from somebody by that name, and he
1419 had adopted the name.

And then in the cross-examination of Mr. Carlsen I recollect that I started back over his past history, and he refused to answer certain questions, on the basis that every man's life has something that he does not want the world to know about. So I did not press him for the confidential information.

That is another thing that I tried in other ways to get,

the background there, to see what his incentive might be if there was something wrong in this picture.

Q. And how many witnesses were put on in behalf of Larson in the Interference?

A. I believe nine, including Mr. Larson.

Q. Now, during the taking of the Larson Interference depositions, did you have any discussion with Mr. Alberts with reference to the testimony of his witnesses, or the manner in which they were testifying?

A. Well, I recollect that when Ford testified I was very much impressed with the fact that he could hardly complete a sentence without cursing. And when I got his transcript, the transcript of his testimony, the reporter had left out the curse words; and I objected to that. I don't think it is on the record; as I recall, it was an off the rec-
1420 ord discussion; and the reporter said that he usually did not put those words in unless he was told to specifically; and it is my understanding that in the final submitting of that to the Patent Office that that testimony would be transcribed as the witness had given it, because I thought it might well affect his credibility in the matter.

Q. Did you hear Mr. Alberts testify as to the fact that you had a motion on or before Judge Barnes in connection with the refusal of certain witnesses to answer certain questions put to him by you in the Interference examination?

A. Yes; one of the things that impressed me very much in the Interference was this: The Larson Application as filed in the Patent Office was limited in its claims to one specific feature. As I understood, it was what we call the tail piece for operating the gauge. And I wondered why the claims would be so limited in the filing of the application, whereas now this serions attempt to obtain the broad claims which came from our application.

I had the feeling that the application as originally filed was filed with the knowledge of Snap-On relation
1421 with Automotive, with the knowledge of the wrench that had been supplied to Snap-On, and with the knowledge that they wanted to avoid anything that might involve a conflict with the Automotive or the Zimmerman applications.

As a matter of fact, contrary to the general practice of the Patent Office, the Examiner had gone out of his way, as I felt, to suggest claims from our application to Larson, suggesting that he make them in order that an Inter-

ference be declared, instead of declaring the Interference on the basis that both parties were claiming by the same subject matter.

Then I got it fixed in my mind that there was something wrong there in that respect; and I was trying to find out from Larson whether or not he understood the claims as originally filed, and what the purpose was in so limiting the claims to that feature. And I asked him this question, and he was instructed not to answer.

I then instructed the reporter to prepare the record, I was taking the matter before Judge Barnes.

Q. I believe Mr. Alberts testified that one of the questions that was certified to Judge Barnes on that motion had to do with who the stockholders of Precision were.

1422 A. No; it was with respect to interpretation, what was the meaning of claim 1 of the application as originally filed.

Q. Now, in connection with that motion which you made before Judge Barnes, did you have any discussions with anyone regarding your going in on that motion?

A. I did.

Q. And if so, with whom?

A. I did. I believe, my best recollection is that it was with Mr. Lindsey; because I was going in there in connection with the very heart of this thing that was back in my mind. And the question in my mind was how far I could go before Judge Barnes in arguing this matter, whether I should bring up or say anything that might cause an inference that there was something wrong in the picture. And he definitely advised me no, that if I did that without proper background in the matter, that I might be getting myself into difficulties.

And I didn't say anything to Judge Barnes at that time, but argued the matter purely on the merits of the question per se. And he very quickly denied the motion.

Q. Now calling your attention to a meeting that was held at your home November 3, 1940, when did you

1423 first know of that meeting?

A. I cannot say; I know that it was

Q. Well, did you arrange it?

A. I did not arrange it; but some one probably did, or Mr. Wacker told me that the meeting was to be held and wanted to know if it would be all right to hold it in my home. And I think that there was some arrangement for

it to be held a certain time on that day, which was Sunday, November 3, 1940; and that something went wrong with the plans, and it was held later; I do not remember exactly how those arrangements came about.

Q. What time was the meeting actually held?

A. It was held in the evening of November 3, 1940.

Q. And who was at that meeting?

A. There was Mr. Wacker, Mr. Travis, Mr. Thomasma, Mr. Krichiver, and I.

Q. How long did the conference take?

A. I cannot say; an hour, or something like that.

Q. Now will you tell us to the best of your recollection what was said, and by whom it was said in each instance, during that conference at your home on that evening?

1424 A. I cannot repeat the words said by anybody, to whom or by whom. I can tell you generally what happened, and from which side it came; and that is the best I can do.

Q. All right; give us that.

A. Mr. Thomasma and his attorney, Mr. Krichiver, inferred from time to time that there was something wrong with the Interference situation; inferred that Thomasma could give us some interesting information; but made it clear that what they wanted to do first of all, before anything like that, was to see that Mr. Thomasma would not be hurt by doing it.

Mr. Thomasma was a stockholder in Precision, and they wanted to sell to us Mr. Thomasma's stock. Because they thought if he testified, his story would hurt Precision, maybe put Precision out of business, and would hurt him in the community; and he wanted to get rid of his stock before he did any talking in the matter; all the time acting mysteriously, and trying to create in my mind the impression that they had something for me that would be well worth our while in purchasing the stock.

Mr. Wacker and I flatly took the position that we would do nothing of the sort, we would have nothing to do

1425 with it. As a matter of fact, we had had an experience before with Mr. Krichiver. We told him that because of our controversy with Precision, that we could not afford to own any stock in that company; it just could not be done.

And we explained that Mr. Thomasma might become a witness in the Interference, and I was doing nothing where

anybody could say I was trying to influence, buy him, or anything else, with respect to his testimony. Because I had a difficult situation confronting me, and I didn't want to hurt him in any way if I were going to use him as a witness.

I did during that conference, after, you might say, the taunting that they did,—I did say—

The Court: What does taunting mean?

A. Well, sort of teasing; leading me to believe that they knew something. I did say—well, I know this, for example; Stated the relationship with respect to Thomasma and Automotive, and Thomasma and Precision, and that Precision was making a wrench for Automotive or for Sampon, and various things of that kind, facts that I knew and had gained through investigation in an endeavor to
1426 get them to drop to me some hint, or something with respect to the thing that they were acting so mysteriously about.

And I think it is set forth in the memorandum that Mr. Wacker prepared, that they acquiesced in those things that I stated.

Q. Was there any comparing or comparison of drawings made at that time?

A. No.

Q. Now, in your answer you said that you had had previous experience with Krichiver; what did you mean by that?

A. Well, back in June, 1940, Mr. Wacker got a letter from an attorney by the name of Krichiver that said he had some information for him that would be of interest to him. Mr. Wacker, as I recall, called me and told me to call Krichiver and make an appointment; which I did.

And Mr. Krichiver met Mr. Wacker and me in my office. Mr. Krichiver said that he was a stockholder in Precision; he understood that there was a controversy on at some kind, and that he would like to sell to us his stock; and he thought it would be of material gain or benefit to us to own that stock; and that if we did, and we were interested in buying the stock, that he could get for us
1427 a considerably larger amount of stock. I think Mr. Krichiver had five shares, something like that.

He mentioned nothing about Mr. Thomasma at that time; and I did not get the connection in that respect until the

conference at my home, when Mr. Krichiver was there representing Mr. Thomasma.

Q. Were there any notes made of this meeting at your home on November 3, 1940?

A. Mr. Wacker at my request wrote me a letter setting forth his version of what transpired.

Q. You did not have a court reporter there?

A. Oh, no.

Q. Or any secretary of yours, taking down what happened?

A. No.

Q. Now, when did you next see Mr. Krichiver?

A. On November 6, 1940 Mr. Krichiver came to my office, his purpose being to further show me, if possible, that it would be perfectly proper, and a perfectly legitimate transaction for Mr. Thomasma to sell to Automotive the stock owned by Thomasma. And I again flatly refused; and nothing more came of it.

Q. Now anticipating for a moment the meeting
1428 that was held at your home on November 7th, did you at the time that you were talking with Mr. Krichiver on November 6th know that the meeting was going to be held at your home on November 7th?

A. No.

Q. Now, had Larson's testimony—and when I speak of Larson I mean Larson personally—had Larson's testimony been completed in the Interference on November 4th?

A. It was completed very shortly after the hearing in Judge Barnes' court on that day. There was some redirect examination, and maybe some re-cross examination after that; but my cross examination as such was completed very shortly.

Q. Now, this meeting on November 7, 1940, at your home, how did that meeting come about?

A. Some one called me on the 7th; my best recollection is it was Mr. Thomasma. I may be wrong; it might have been Mr. Travis.

Q. And what was told you at that time?

A. That Mr. Thomasma would like to see me and talk with me at my home on that evening.

Q. Who was present in your home that evening?

A. Mr. Thomasma, my secretary Miss Johnson, and myself.

1429 Q. And on that evening Thomasma told the story which subsequently became the so-called Thomasma affidavit, which has been mentioned in this case?

A. On that evening and the next evening, November 8th, he did that.

Q. In other words, the story that he told on those two evenings, as taken down by your secretary, Miss Johnson, ultimately became the Thomasma affidavit, is that right?

A. That is correct. And having heard that affidavit read here, I think that we must have done considerable talking and discussing the situation generally on the evening of November 7th. Because there were some questions that I asked that appear to be based upon something that he had told me previously; and I could not have had that except on the previous evening of November 7th.

Q. What arrangements were made to have it signed, and how was it signed, when and where, if you know?

A. Well, I think that it is completely transcribed, and I read it through about five or six days after I took the statement, after the 8th of November. I made a few corrections in my questions, for the sake of clarity; but I did not change anything in what Mr. Thomasma had

1430 stated. And then on the 15th I had Mr. Herbert Schmid of our office take the affidavit out to Mr. Thomasma; and I instructed him to have Mr. Thomasma initial and have the notary put his seal on each sheet. And that was done.

I also asked that Mr. Thomasma make such corrections as he wanted to make, in ink, or in his own handwriting on the pages of the affidavit.

Q. Now, the contents of the last two pages of that affidavit, I believe it has been testified were added subsequently to November 7th and 8th; is that correct?

A. That is correct. That was done very shortly before the signing of the affidavit; and it is my recollection that that information was added in view of a telephone discussion of the subject matter thereof with Mr. Thomasma. I do not think that I would insert that in the affidavit without getting the information straight from Mr. Thomasma.

Q. That had to do with the so-called anonymous letter that was shown to him in an automobile somewhere in Des Plaines?

A. That is correct; that is the letter of November 11, 1940 from Mr. Alberts to Mr. Larson.

Q. Now, after Thomasma had told you the story on November 7th and 8th, what was done with reference
1431 to the investigation that was being made by Mr. Wise?

A. Well, then I instructed Mr. Wise to go ahead with the investigation, in an attempt to check Mr. Thomasma's story. One of the things that was a mystery to me at that time, and still is, was the name of Dawson on that drawing.

I have been told that Dawson, or I believe that the affidavit states something to the effect that Mr. Carlsen said that Mr. Dawson had been taken care of. I made as strenuous effort as I knew how to locate Dawson, because I thought he might hold an answer to a lot of things. I have never been able to find Mr. Dawson.

And I also had in mind various things that Mr. Thomasma had told to me which I was checking up on, and get the investigators going right on to complete the investigation for corroboration purposes; because so far as I knew then, it was a matter of getting the evidence together, and taking evidence in the Interference to establish the fact, if possible.

Q. Did you make any investigation personally, other than and separate and apart from what Wise was doing?

A. I did.

Q. What did you do?

1432 A. I talked to Mrs. Thomasma, and I talked to Mr. Thomasma's brother John; and I talked to and took the matter up with a handwriting expert. I could not get any real coherent story from Mrs. Thomasma as to the wrench propositions, but she did—one thing she did corroborate was the fact that she had introduced Carlsen to Mr. Larson, she having known him through going to the beauty parlor. Mr. Thomasma's brother could not back up the things which George Thomasma said that he could.

Q. What did that have to do with?

A. That was with respect to the making of the drawing that Larson said was made by the high school boy, and which Thomasma said he made.

And the handwriting expert I took the matter up with him; that was Mr. Salmon,—to get his judgment, to try to find out whether or not it was the fact that the drawing was made by Thomasma.

Q. What did Mr. Salmon report to you, as a handwriting expert?

A. First of all, I tried to get Mrs. Keeler, and I could not get hold of her. And I then took the matter up with Mr. Salmon. I went over to his office on the 22nd of November, 1940, and showed him a small photostatic
1433 copy of the Larson drawing, which copy I believe had been furnished to me by Mr. Alberts.

And I explained the situation generally to him; and at the same time I took with me a drawing which Thomasma had given to me, in which he said that he had made, covering another device; namely, a cylinder surfacing tool, a home. And the first time I talked to Mr. Salmon—

Q. November 22?

A. November 22; he did tell me that there were several similarities between the two drawings; and that the drawing supposed to have been made by the high school boy did not look like by a boy, but by a more mature person.

In that respect, I may say that in my pretrial deposition, as I told you right after I read my deposition, and after having refreshed my recollection with respect to a letter that I wrote to Mr. Wacker, that I improperly said that Mr. Salmon had not advised me there were many similarities. I know that he did, by refreshing my recollection from the letter I wrote to Mr. Wacker at the time that I advised him I could not or was unable to retain Mrs. Keeler.

Q. Did you hear Mr. Salmon testify on this stand?
1434 A. I did.

Q. That he left those drawings and comparisons at your office that night, and you were to send them to him the next day, or the day after?

A. That comes a little bit later; he asked for an enlargement of the Larson drawing, so far as possible to bring out the letter size, size of the drawing; the known drawing, we will say, that I presented to him. And I secured them for him, and sent them over to him; and I am not certain, but I think I called him on the 27th to find out if he was in position to give me an opinion.

But he was not, because he said that he required some further explanation; explained to me that in drawings and painting a man's work may improve from time to time, and characterizations may change in such a way that it creates uncertainties.

He came over to my office, because I was going to have

a meeting the next day with Mr. Alberts and Mr. Johnson; and I wanted the information, if possible, that I could give it to them. And he looked at the other drawings which I had in my office, which was on a cylinder surfacing machine; and he found in looking at that some other discrepancies, which I understood had him
1435 so worked up—what he was trying to tell me was that to tell me further about the work that he saw, and he couldn't tell me then whether it was or was not the work of the same man.

Q. And his story that you were to have something additional for him, and he was to pick it up in a day or two, is that substantially correct?

A. That is correct; but I became ill and was not back to my office until on the 9th of December. But in the meantime negotiations got around to the point of settlement; and we never got around to where I turned anything over to him. And I retained his work sheet, which I am quite sure I should not have had, from what he has told me.

Q. Now, this first discussion you had with Mr. Salmon was on November 22, 1940; is that correct?

A. That is right.

Q. Prior to that time, on November 9, 1940, you had had a conference with Mr. Alberts; is that correct?

A. That is correct.

Q. Will you tell us how that conference came about?

A. Well, by that time I had the statement by Thomasma.

Q. So-called Thomasma affidavit?

1436 A. So-called Thomasma affidavit; and I was working on a matter for the Burroughs Adding Machine Company in which I had a hearing in Washington November 18th; I was at the office of our Washington associates, Bacon & Thomas, who have done a lot of work in connection with Automotive's cases.

And I discussed with Mr. Charles Thomas of that firm the situation that was confronting me.

Q. Which was that,—what situation?

A. In other words, I had this testimony of Larson, eight or nine witnesses, telling a fairly straight forward story, on the one hand; and I had the contradictory story of Thomasma on the other hand; and I didn't know what to do about it. In other words, I personally was inclined to take the position that I should do something drastic.

Q. By which you mean what?

A. I wanted to know whether there was any way that I could take this matter to the Patent Office; or whether I could take it up with proper authorities, the District Attorney.

Because at that time Mr. Wacker had been subjected to a great deal of expense; and if there was any way
1437 that the matter could be ended, with a minimum of expense to him, I would have been glad to do so.

I consulted with Mr. Thomas; and he told me, advised me that I had no reason to go to the Patent Office. He told me of a similar situation in which he had been involved; I believe it was in connection with some of the oil cracking cases, where a matter had been presented to the Patent Office and also to the District Attorney. The District Attorney would not touch it, because it was a priority matter in the Patent Office; and the Patent Office would not touch it because you go ahead and present your case; and when you have done that, then you can go into the matter.

So he warned me that I was in no position to go in there at that time. So he suggested that because of my lack of proof, I didn't have the proof, I didn't have the proof that was necessary to start something rolling; that maybe I could not stop, and it would come back on me as being responsible for it all; so I didn't have the proper proof.

Mr. Thomas did advise me, though, that what he would do under the circumstances would be to get in touch with
1438 Mr. Alberts and explain this situation to him, and see whether he had any suggestions to offer.

I came back to Chicago on the 19th of November, got in touch with Mr. Alberts on that day or the next day, and told him that I had some information to discuss with him about a matter, and I wondered if he would come over to my office and talk with me. Out of professional courtesy, I asked him that; and he did come over.

Q. Who was in your office when he came over on November 20th?

A. Mr. Alberts and I were there alone.

Q. Now just tell us what conversation there was between Mr. Alberts and you on November 20th, in your office?

A. I cannot repeat words.

Q. Give us the substance.

A. My best recollection of the general substance of what transpired: Well, I remember that I prefaced my remarks, the statements to Mr. Alberts to the effect that in calling him over there I did not want him to feel that I was casting any reflections on him, that I was threatening him in any way; that if this Interference should go forward there would be a lot of mean things that would be said, and I was calling him over to tell him about them, because I thought he should know about them.

1439 As a matter of professional courtesy. I told him that I had secured the Thomasma statement; and I told him that that statement contained many things contradictory to what Mr. Larson and his witnesses had testified to. I think that I had the affidavit; and my recollection is I offered Mr. Alberts an opportunity to look at it, but he did not want to do so at that time.

I explained, I told him some of the things that Thomasma had stated. I did tell him about the drawing, which Thomasma said in his statement was his own, instead of Larson's. I did tell him about the marking on the wrenches. I mentioned something about Carlsen under an assumed name; I mentioned those, what we might say those highlights of the Thomasma story, which were directly contradictory to things told by Larson and his witnesses.

And at the end of that Mr. Alberts mentioned something about that if a story like that were true, that of course adverse interests would arise as between Larson and Snap-On, or somewhere in the picture; and that he would like his client to hear the story first hand. And as the result of that, arrangements were made for us later to get together in my office on November 28, 1940.

1440 Mr. Smith: Q. Have you exhausted your memory as to what it was that you told Mr. Alberts in your office on November 20th?

A. That is all I recollect now.

Q. I am referring in my following questions to Defendants' Exhibit No. 70, which purports to be a memorandum of Mr. Alberts as to his conference with you on November 20th and which was produced by Mr. Alberts at the time his pre-trial deposition was taken or some time immediately during the negotiations which led to this trial.

In that memorandum Mr. Alberts notes that you said

something to him about Larson having been at AMMCO on numerous evenings with Thomasma and that he had the run of the plant, Thomasma, and was in the nature of a straw boss.

Do you remember anything about that being said on November 20th?

A. I think there was something to that effect.

Q. He also notes that Thomasma was considered a genius in many ways and was supposedly the originator of many improvements on the AMMCO wrench that were submitted to Zimmerman, but the latter would never 1441 adopt them.

A. Something to that effect, yes.

Q. He also notes that you discussed the fact that the lathe in Larson's basement was purchased out of funds borrowed from the bank and this loan was signed for both by Thomasma and Larson sometime in 1937 and 1938.

A. That is correct, I remember that.

Q. That you also stated at that meeting that Carlsen supposedly met Larson for the first time through Thomasma's wife who frequented the Carlsen Beauty Shop, and that was in 1938.

A. That is correct. Those are matter that were contained in the Thomasma affidavit, as I recollect.

Q. He also notes that you told him you had information that Larson went with Thomasma to the plant of the Miniature Railroad Company at Sturtevant, Illinois to look at the torque wrench and to prove to them that Larson's wrench was better. Do you recall any such thing as that?

A. Not exactly that way. I mentioned something about the Miniature Railroad Company of Glen Ellyn, Illinois in connection with some story that Larson had told about the breakage of one of his wrenches, and something 1442 that Thomasma had told me about how that breakage occurred.

Q. And he notes that also at that conference you claimed to know the code representing letters on two of the wrenches, that you explained that code.

A. I told him that Mr. Thomasma had told me what that code was and had explained it to me.

Q. He also notes that the aluminum castings set forth on sales slips of the Ravenswood Brass Company, while

genuine, supposedly, covered castings other than those for the wrench. Was that discussed?

A. Something along that line. That was one of my points of cross examination of Mr. Schultz who just pulled an invoice out of the air, so to speak, and said that that was it, and he was quite positive of it, notwithstanding the fact that he couldn't tell me what the castings were, immediately in the preceding invoices and in the invoices immediately after that.

Q. Then, as Item 11 in Defendants' Exhibit No. 70, the following is noted, and I quote:

"Fidler insisted that Wacker of AMMCO would force this matter out in the open if they were compelled to prove these facts, by taking testimony at Hartford, Con-
1443 necticut (apparently Zimmerman's present residence) and elsewhere in the United States at great expense. In that event action for perjury would be insisted, and the case thrown wide open with the axe piercing wherever it would fall."

What about that?

A. I said nothing of that sort at that meeting. I never used the expression about the axe piercing where it falls. I have used the expression, to hew to the line and let the chips fall where they may, but not the other expression, and so far as going to Hartford, Connecticut to prove anything in respect to Larson's story, that would never enter my mind because the only reason for going there was to see Mr. Zimmerman or to take his testimony, which was the priority testimony directly of Zimmerman.

Q. Were you present in the court room when Mr. Alberts testified as to what occurred at the meeting of November 20th in your office?

A. I was.

Q. Mr. Alberts, on page 423 of the record, in testifying as to that meeting, after stating that the usual greetings had been made, that you told him that you were
1444 calling him over as a matter of professional courtesy and that you had a large affidavit, then said:

"That he"—meaning you—"had a large affidavit in his possession, which he pointed out, that proved beyond a doubt that Larson was committing perjury, and certain witnesses on behalf of Larson."

Was there any such statement as that made in the November 20th conference?

A. I made no such statement. I showed the affidavit to Mr. Alberts and offered him the right to read it, and he did not care to read it then, and I told him these various things that appeared in it, as told by Thomasma.

Q. Then he continued; still on page 423:

"They knew that I could not have known anything about it, by virtue of my conduct in the deposition and throughout the deposition; and would I like to hear what he had."

Do you recall that testimony?

A. I do.

Q. Was that substantially true, or true, or any part of it?

A. I explained to Mr. Alberts, in telling him that I 1445 was not calling him over there to make any accusations against him, that there were various indications during the taking of the testimony that might cast some reflection on him, and I wasn't in any sense of the word calling him over there to make any accusations against him.

Q. Then Mr. Alberts testified that he stated to you that he was quite embarrassed and was being put in an embarrassing position by Larson, that he wanted to check further.

Is that substantially true?

A. Not that. What he wanted to do was take the matter up with his client and let the client hear the story.

Q. He then testified, on page 424 of the record:

"He"—meaning you—"pointed out to me numeral characters and the printing on that drawing, which he then told me was a sketch of an abrasive chuck, but that it had no bearing on what I was there for, except to see how similar the characters were on that drawing with those in Exhibit 27."

And then, continuing on page 425, he said:

"I made an examination; I told him that I was convinced they were made by the same parties, and I 1446 looked very much like Larson had given false testimony."

Is that correct?

A. He did not tell me he was convinced. We discussed the matter. I showed to him the Larson drawing and I showed to him the other drawings, and I believe that we did point to some things that to us looked like there was a

similarity, but Mr. Alberts did not tell me that he was convinced that the two drawings were made by the same man.

Q. On page 426 of the record, after testifying that you showed him the drawing, Mr. Alberts testified to the following:

"He"—meaning you—"told me that he wanted me to come to a conclusion as to whether or not Thomasma's statement was correct, with respect to Exhibit 27; and that he thought that to convince me that Thomasma's statement with respect to Exhibit 27 was correct, and that Larson's was false. And I looked at both very carefully, and came to the same conclusion."

Of course, only with reference to what you said, did you tell him, Mr. Alberts, that you wanted him to
1447 be convinced that the Thomasma drawing was the same as Exhibit No. 27?

A. I showed him the drawings, and he could use his own judgment.

Q. And again, on page 427 of the record, Mr. Alberts testified:

"I told Mr. Fidler it certainly looked like they were made by the same person; and that undoubtedly Mr. Larson did not make, or have some high school boy make that Exhibit 27."

Did Mr. Alberts make that statement to you?

A. He did not. May I say, we discussed some similarities, but we did not come to any conclusion or express any conclusions respecting the fact the drawing was or was not made by the same man.

Q. All right. Now, as a result of the meeting of November 20th, a subsequent meeting was arranged, at which time Mr. Alberts wanted to have Mr. Johnson present, is that correct?

A. That is correct, and it was held on November 28th, 1940.

Q. And that meeting was held in your office?

A. That is correct.

1448 Q. And just tell us again who were the parties that were there?

A. Mr. Wacker, Mr.—

Q. Give them to us, if you will, as they came in to your office where the conference was held.

A. First Mr. Wacker then Mr. Allen came to my office.

Later Mr. Johnson and Mr. Alberts came, and prior to the time that they came in, Mr. and Mrs. Thomasma had come in to the office and were in another office in our suite.

Referring to the meeting itself, first of all, Mr. Wacker and Mr. Allen came in, then Mr. Alberts and Mr. Johnson, and finally Mr. Thomasma.

Q. How did the meeting break up, what was the order of leaving?

A. Mr. Thomasma left first. Then Mr. Alberts and Mr. Johnson, and finally Mr. Wacker and Mr. Allen.

Q. Just tell us what happened at that meeting, as close as you can, from the very beginning.

A. When Mr. Johnson and Mr. Alberts came in and the greetings and introductions were completed, Mr.—I am not sure—it may have been before the introductions— Mr. Johnson opened up his hands and said to Mr. Allen, I believe directed mainly to Mr. Allen and Wacker, that
1449 he is there with clean hands.

I know that shortly following that statement I challenged it by reviewing the facts that I knew respecting the relationship of Snap-On and Automotive, and Snap-On and Precision and Thomasma in the picture, and I stated that in view of those circumstances I didn't feel that Snap-On was very well circumstanced in the picture or in the situation.

Q. When you Thomasma's situation in the picture what did you mean by that?

A. I mean the fact that Thomasma was our prior employee, that is, Automotive's, prior employee, that he had helped develop the wrench that had been furnished to Snap-On, and he had gone to Snap-On at some time or other to service wrenches and that he, while an employee of Automotive's had gone with Larson and help form Precision, and that he was one of the incorporators of Precision, that he was a stockholder of Precision, and Precision was now making wrenches for Snap-On, according to the information that I had, of a wrench that had been brought from Automotive to Precision and handed back that way to Snap-On, a wrench very similar to the one that we had made for Snap-On. When I say "we" I mean Automotive.

1450 Q. What you have just recited, are those the things you said to Mr. Johnson?

A. Yes, I pointed out that whole situation to them,

and because of that I didn't feel—and if you read my letters, from the very beginning, I never did feel that Snap-On was very well circumstanced in that situation.

Q. Confining yourself to the meeting of November 28th, what happened after you had these preliminary discussions?

A. There were some discussions as to whether or not we would merely read the Thomasma affidavit or examine Thomasma or let him tell his story or let him just come in and ramble on and tell his story, or whether we should do it by questions, and so forth, and, as I recollect it, Mr. Alberts suggested that I ask Mr. Thomasma questions, and I did that, bringing out substantially the story that was told by Thomasma to me in his statement or affidavit, and after that I asked Mr. Alberts if he had any questions to ask, and he said that he didn't think that he did, and then he did ask Mr. Thomasma whether he had ever met him before and whether Snap-On knew anything about him in the situation, and I think, as I recollect it, Mr. Thomasma said, "No," to those.

1451 Mr. Johnson said something about he had never heard of this man before, and Mr. Thomasma turned around to Mr. Johnson and said something to the effect that, why, he should know him because he had seen him several times at Snap-On, or something like that. And after that they had heard Thomasma's story, and Mr. Alberts and Mr. Johnson left, and sometime after that Mr. Wacker and Mr. Allen left.

Q. Now, how long did that whole meeting take on November 28th?

A. I think it was around about two hours.

Q. Did you go through all the statements in the Thomasma affidavit in those two hours or just portions of it?

A. No, I didn't take the Thomasma affidavit and put the questions that were in that affidavit. Knowing the story that he had told me, I started from the beginning, his relations with Automotive, and so forth, and brought it up to date, covering, in doing that, substantially the story that was told in the affidavit.

Q. Prior to the time that Mr. Johnson and Mr. Alberts left, was there anything stated by either of them as to future intentions?

A. Yes. Mr. Alberts again referred to the fact that

if this story were true, that adverse interests will
1452 have arisen as between Larson, or Precision and
Snap-On, and that he would have to withdraw as attorney for Larson because his client was mainly Snap-On.

Q. Anything said by Mr. Johnson?

A. Yes. I remember that he remarked something about, if this were the true story, or something, that the whole thing smells to the high heavens.

Q. Is that all that you recall that took place at the November 20th, conference?

A. That is all I recall.

Q. Mr. Fidler, my next questions are based upon Plaintiff's Exhibit No. 13, which was a purported memorandum prepared by Mr. Harry C. Alberts, dated December 18th, 1940, purporting to cover what went on in the meeting of November 28th, 1940. In that memorandum Mr. Alberts notes the following, and I quote:

"The first hour involved a discussion as to whether or not Johnson would admit that Precision was Snap-On and Snap-On was Precision. Unless this was understood, Fidler and Wacker said they would not divulge any information concerning the alleged perjury of Larson and the witnesses in his behalf. We refused to concede this
1453 as an understanding and nevertheless Fidler proceeded after a discussion about an hour, to call in Thomasma and interrogate him in a more or less formal manner."

What is the fact with reference to your insistence, if any, that Precision was Snap-On and Snap-On Precision?

A. I didn't so insist. I say that in response to this declaration by Mr. Johnson he was there with clean hands, I stated my position, as I have testified, respecting the circumstances which I didn't feel were so good in respect to Snap-On.

Q. Was there any statement made by you that unless they admitted that you would not divulge any information concerning the alleged perjury of Larson?

A. No, sir, because the purpose of this meeting was to hear that story, in the first instance, and I think that a letter that I wrote to Mr. Alberts or he wrote to me confirming our arrangements shows that to be the fact.

Q. This memorandum prepared by Mr. Alberts further notes:

"After hearing this formal testimony which was
1454 not under oath, but a demonstration of what Thomasma would testify to, Alberts stated openly at the conference that he was withdrawing as attorney for Larson in that he was brought into the case through Snap-On and would therefore continue to represent Snap-On in view of the fact that there apparently were charges and counter charges to be made in this case and a conflict of interests might develop between Snap-On and Larson, so that it would be best for Alberts to withdraw."

Is that correct?

A. He did discuss or did mention about adverse interests and that he would or might have to withdraw, but it was predicated upon what he might learn as to the fact respecting the story that he had heard. I don't think that Mr. Alberts or any other attorney would, after hearing that story at that time, conclude or condemn this client.

Q. Was there any discussion at that meeting with reference to a settlement of the case or any proposal of a settlement of the Interference?

A. None whatever.

1455 Q. Was there any discussion regarding concession of priority by one side or the other?

A. No, sir.

Q. Any mention of any idea of settlement at all in that meeting?

A. No, sir. The matter was left just the way I stated it.

Q. Did you hear Mr. Joseph Johnson testify?

A. I did.

Q. I am referring to page 360 of the record, a question directed to Mr. Johnson, and his answer, as follows:

"Question: Did Mr. Alberts say anything about what he was going to do in connection with the Interference?

"Answer: Oh, yes. He did state to Mr. Fidler that in view of the information that we had learned, that we would immediately get in touch with Mr. Larson and that if the facts were substantiated by Mr. Larson that he would grant a concession of priority, or whatever it happened to be, in the Interference proceedings, and also that he would withdraw as attorney for Larson."

1456 Is that statement true, or any part of it?

A. There was no mention of a concession of pri-

ority in that meeting, and the withdrawal by Mr. Alberts was qualified, as I have stated it.

Q. On the same page, in answer to the following question, the following answer was given:

"Question: Did Mr. Fidler make any statement to you or Mr. Alberts or to both of you as you were leaving?

"Answer: Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker, that Mr. Wacker had spent considerable money on tension wrench patents and that unless a satisfactory adjustment was made with him, that he would unleash the dogs."

Any statement like that?

A. No, sir, that is not my language. I never made any such statements as that.

Q. Then, continuing, Mr. Johnson was asked, on page 360 of the record—

A. May I say, when we went into that meeting with Mr. Wacker and these gentlemen, it was with the idea we were not going to threaten anybody and not accuse
1457 anybody of anything, but to let them hear this story first hand and let them formulate their own judgment, and in keeping with our original idea, that Mr. Thomasma had given to me, let them hear the story and see if Mr. Alberts has any suggestions.

Q. Then, continuing on page 360 and 361 of the record, and this is after the quotation about unleashing the dogs:

"Question: Mr. Fidler told you that?

"Answer: Yes, sir. He made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States Patent officials and that it was even a matter for the United States District Attorney."

Was there anything stated like that?

A. No, sir.

Q. Had you ever discussed the matter with the United States Patent officials?

A. No, sir, I had not.

Q. Now I am referring to Mr. Alberts' testimony in this case, Mr. Fidler. On page 430 of the record, Mr. Alberts stated, in answer to your statement that you were proceeding on the basis that Snap-On was Precision
1458 and Precision was Snap-On and that you would only give the information providing they agreed to that,

as follows, in answer to the questions that I will read from the transcript:

"Question: What did you say?

"Answer: (This is Mr. Alberts now testifying, page 430) "I said we were here in behalf of Snap-On Tools Corporation, and Snap-On Tools Corporation alone; under no circumstances would I subscribe to that misunderstanding; that that was not true, that never has been true and it was not true now. And I certainly would not even want to continue further under those conditions.

"Question: And then what happened?"

And now, on page 431 of the record:

"Answer: Well, Mr. Fidler was quite shocked that I took that position as abruptly as I had taken it. And he said, 'Well, Snap-On's hands are not too clean in this matter either.' And then Mr. Johnson replied by saying that Snap-On's hands were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane.

1459 And for a moment nothing was said by anybody.

Finally Mr. Fidler said to Mr. Wacker, 'What shall we do about it?' Or, 'What do you think we should do?' Mr. Wacker replied and said, 'Well, it is up to you.', And Mr. Fidler said, 'Well, you are here now. I told you I would get you the information first hand. I have Mr. Thomasma here. We might as well go ahead with the conference.'"

What portions of that are true?

A. Well, I know that Mr. Johnson mentioned something about he was there with clean hands. I know he mentioned something about Snap-On doing business on a high plane, but never would I, having called these gentlemen in there, take that position, and I didn't take the position of trying to dicker with them before hearing the story, because that is what they were there for in the first instance.

Q. On page 432 of the record, Mr. Alberts said that it was finally agreed that you were to go ahead and ask the questions of Mr. Thomasma, and then he said, at page 432:

"And if I have anything to add I will ask permission later on to direct some questions to him," meaning

1460 Thomasma. What is the truth of that?

A. He did not have to ask any permission because I extended him the courtesy in the first instance of asking

the questions, and he wanted me to ask them, and I asked him at the end of the conference if he had any questions and, as I stated, he did have a few.

Q. On page 433 of the record, Mr. Alberts further testified that, after you said you were through asking questions, you asked him if he had any questions, and he said he did, and I quote:

"So I examined Thomasma on what he had known about Snap-On Tools Corporation, and about myself; if he was the inventor of this, why didn't he come in to see me. He replied by saying that Larson and Carlsen refused to allow him to come and see me; that he wanted to come and see me, but they absolutely prohibited him from coming to see me."

Is that correct?

A. No, there was no discussion of that kind.

Q. Continuing, and I am reading now from page 434 of the record:

"I asked him if he had gone to Snap-On Tools
1461 Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked him if he had met Mr. Joe Johnson then; he said no."

Is that true?

A. That he met Mr. Johnson?

Q. Would you like to have me read it again?

A. Just the last sentence.

Q. "I asked him if he had met Mr. Joe Johnson then and he said no."

A. Well, the conversation just prior to that, I have no recollection of anything like that, and I don't think it occurred, because the only discussion with Thomasma was about his contact or knowledge or whether or not he knew Mr. Alberts and Snap-On and, as I recall it, Mr. Johnson raised the question whether or not Thomasma knew him, and that is when Thomasma turned around and said he should know him, that he had been to Snap-On and had seen him several times.

Q. Mr. Alberts then continued:

"I asked him" (meaning Thomasma) "why he did not
1462 come to see me, if he was the inventor he should have told me about this invention, and I could then have prepared the application in his name, if he was the inventor; that was the proper way of doing. He said that

Larson and Carlsen insisted if I knew that any ex-employee of Precision was connected with Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision."

Any such conversation or questions and answers?

A. No, nothing like that.

Q. Continuing further, Mr. Alberts testified, on page 434:

"Answer: Well, we got our coats and hats; we stood up and were about to leave, when I made the statement to Mr. Fidler that, under all of the circumstances that were presented to me at that hearing, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; that they would use their influence on Larson to see that that was done;
1463 that I saw no other way out of it."

What is the truth of that?

A. No, there was nothing like that happened.

Q. Mr. Alberts further testified, on page 436:

"Answer: I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority; and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do."

Anything about that?

A. Nothing like that. The first time that I ever heard of a concession of priority in the matter was when Mr. Hobbs came to my home on December 2nd, 1940.

Q. Still reading from Mr. Alberts' testimony, page 437 of the record:

"Answer: Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over five thousand dollars investigating Larson and his associates; that a concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and set-
1464 tled promptly, or else Mr. Wacker would instruct him to unleash the dogs."

A. Nothing like that was said at that meeting.

Q. And I am still quoting:

"And he continued by saying that he had already talked

to the Patent Office officials, and that if Mr. Wacker was compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense, that he certainly would have to go to the District Attorney with this matter."

What about that?

A. As I previously explained, that was not stated at that meeting.

Q. On page 438 of the record, Mr. Alberts testified, with reference to the fact that Mr. Zimmerman lived in Hartford:

"And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman as an engineer."

A. No. Mr. Wacker would never do that.

Q. Did you do that?

A. No, sir.

1465 Q. And, continuing on page 438 of the record, in answer to this question:

"Question: And what happened after Mr. Fidler made the statement to you that concession would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?".

Mr. Alberts answered:

"Answer: Well, I couldn't say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation; from there on I was representing Snap-On Tools Corporation, and Snap-On Tools Corporation alone; and Mr. Larson would have to get another attorney, and he would undoubtedly hear from his attorney."

Was there anything said like that?

A. Nothing was said with respect to hearing from any other attorney for Larson, or anything like that. Mr. Alberts may have mentioned the fact to me that I would hear from him later, but nothing about another attorney.

Q. Now, on page 448 of the record the following
1466 question was put to Mr. Alberts and he made the following answer:

"Question: Coming back to this conference at Mr. Fidler's office, was there any mention of suspicion by any of the people there on behalf of Automotive?

"Answer: No mention—no word like 'suspicion' was used. As far as I could gather, it was all cut and dried,

and as far as Fidler was concerned he let me know he had the goods and he expected to deliver the goods. That is the way it was put to me at both of our conferences."

And when he said "both conferences" he testified on the same page that he meant November 20th and November 28th.

What is the fact as to that?

A. That is not true, because it was not cut and dried, and I gave no one and intended to give no one the impression that it was cut and dried. I was merely laying open to his inspection for his own decision the information that I had.

Q. What was the next thing that happened in connection with this case, Mr. Fidler, after the meeting of
1467 November 28th, 1940?

A. Well, I remember that I sat with my back to an open window in my office when I examined Mr. Thomasma, and the result of which was an attack, a recurrence of an attack of my back that put me out, and I was home ill from the beginning—the 29th until December 9th, 1940, and while I was home ill my secretary, I believe, informed me of a letter that had been received from Mr. Hobbs, and as a result of that arrangements were made for Mr. Hobbs to come out to my home and see me on December 2nd, which he, accompanied by Mr. Edward Haight, did.

Q. Who was present at the conference at your home on December 2nd, just the three of you?

A. That is right.

Q. Hobbs, Haight and yourself?

A. That is right.

Q. Tell us just what the conversation was at that time.

A. I can't recall the direct words.

Q. Give us the substance of it.

A. But I know that we exchanged greetings with each other, and they did discuss my home. I was then in my den, on a daybed, and then Mr. Hobbs told me that he had
come into the matter for the purpose of settlement
1468 of the Interference, if possible; that he had a proposition to make, and he didn't get very far until I tried to tell him the things in my mind, the story about Thomasma, the facts set forth in the affidavit and testimony, but he stopped me and said that he didn't want to discuss that and wouldn't discuss that, that he hadn't

looked into the testimony or the affidavit or any of those things and he was there merely to make a proposition of settlement.

He then proceeded to make me the proposition which is set forth in my letter to him of December 6th, 1940.

1469 Q. Mr. Fidler, do you recall that just before we adjourned last night we had discussed the fact that Mr. Hobbs and Mr. Haight had come to your home on December 2nd and conferred with you at that time.

A. Yes.

Q. Do you recall whether or not we completed the testimony as to what happened in that conference at your home?

A. I am not certain. I think I was getting my recollection.

Q. With the Court's permission, would you tell us again what it was that was said at this conference of December 2nd?

A. I can't recollect everything that was said.

Q. Give us the substance.

A. But the substance of it, we exchanged greetings and there was some discussion about my home. I was at that time in my den lying on a daybed, and Mr. Hobbs explained that he was there in connection with an

1470 attempt to settle the interference, and I began to try to tell him something about the matter, and he said he didn't want to hear anything about it, didn't want to discuss that, he hadn't read the testimony or the Thomasma affidavit or didn't know anything about those things. And I believe he said something to the effect that he was going on the basis that everybody was wrong in the picture and that they wanted to settle, and he proposed to me the giving of a concession of priority and other things that were set forth in the letter that I wrote to him on December 6th, 1940.

At that time I believe that I mentioned something about the relationship of Snap-On and the parties in this situation, that Mr. Wacker was inquiring of me or pressing me with respect to some possible damage to him. As he looked at it, he didn't see how a man could work for him and help develop the wrench and then go over to Precision and help work out a wrench there which in turn would be sold to his customer Snap-On without him being damaged some way, and I don't remember what was said along that

line, whether I went into great detail or not, but my impression is that that is correct, and it is indicated to me by the first paragraph of the letter that I
1471 wrote to Mr. Hobbs on December 6th.

Q. Is that all of your recollection as to what happened at that meeting?

A. Yes.

Q. What is the fact as to whether this was the first mention or approach to the question of settlement by any of the parties involved in the entire Larson-Zimmerman Interference?

A. It was.

Q. Had there been any previous mention by anybody in any of the conferences in which you took part as to any possible terms of settlement or any theory of settlement or any idea of settlement?

A. None whatever.

Q. Around this time, and I mean December 2, 1940, did you confer with anyone not connected with the case, with reference to the situation which you then found yourself faced with?

A. After Mr. Hobbs had been to my home I talked to Mr. Wacker and told him the general substance of our conversation, and Mr. Wacker immediately came back again at me with the idea, didn't he have some recourse
1472 for damages in this matter? And he had had that impression for a long time, and maybe I had given it to him in being a little too outspoken maybe in my prior letters, but I had always told him that I was concerned only with the Patent Law and that I thought that other matters had to do with the general law question and that he should take that up with his own general attorney.

Well, that started the activity of his mind again, after this conference of mine with Mr. Hobbs, and he pressed me again in that respect and I again suggested that he take the matter up with his general attorney, and he said he would do so, and he informed me that he was getting in touch with Mr. David Dunbar of the firm of Dunbar and Rich.

On December 7th, 1940, Mr. Dunbar called me, as I understood it, from his home, and said he had talked to Mr. Wacker and he wanted me to go over the situation with him and acquaint him with it. Wacker had given him some of the facts. So I reviewed the general situation.

Q. When you say "reviewed the general situation" what do you mean, Mr. Fidler?

A. I mean the relationship of these parties, that is, Snap-On's connection with Automotive, and Thomasma's connection with Automotive, and his forming of the 1473 Precision Instrument Manufacturing Company while he was still an employee of Automotive's and the making of a wrench which was very similar to Automotive's wrench that they had been supplying to Snap-On, and the fact that Thomasma had worked with Mr. Zimmerman in the development of that wrench, and I also explained to him the fact that I had had an investigation made in the matter and that those facts were developed and that I had secured from Thomasma a statement which was contradictory to testimony given by Larson and his witnesses.

I explained that Mr. Larson and eight or nine witnesses had testified to a rather straightforward story, and I asked him what I should do in the matter, whether I was in any position at that time to pursue the matter further.

Q. "Pursue the matter further"? What did you say?

A. That is, with regard to turning it over to the authorities or—I was asking him, in a sense, what Automotive's obligations or liabilities in the matter might be. I didn't want to do anything that might involve them or me in any kind of a damage suit whatever. My views in the matter were, as I had been previously advised, not to do anything until you have positive proof of it, because when you start something like that you can't stop it and it might involve you in difficulties if you couldn't prove it.

Q. What was Mr. David Dunbar's response?

A. He advised me that we were in no position to assert any conspiracy or have any action for civil damages at that time, because we hadn't proved anything definitely. All we had was rumors to go upon. He said that I was not in the position to pursue the matter with respect to the authorities because I had only Thomasma's word for the matter, and that Mr. Thomasma was a disloyal or disgruntled employee and that he was being kicked around by Precision, and that he wouldn't believe his word under oath.

Q. Was that the extent of your conference with Mr. Dunbar?

A. No. The matter of civil damages and also reference to the authorities, those two matters were discussed together, and I have a recollection that he said that it might be construed also that we were trying to use the authorities as a means of force, or something like that. I don't remember just exactly what his advice was, but, there was something to that effect.

1475 Q. When did Mr. Harry Lindsey, your partner, begin to take active interest in this Larson-Zimmerman-Interference?

A. I returned to the office from my illness on December 9th and I was still in pretty bad shape, but I could move around and I was all taped up, but I still was in considerable pain, and I didn't know whether I would be able to carry on or not. So I called in Mr. Lindsey, as I have done numerous times. We had worked close together in various matters and I asked him to enter into the negotiation matter of settlement, because I didn't know whether I could carry on or not in the matter.

Q. What is the fact as to whether from that time on Mr. Lindsey remained active in the negotiations which were ultimately concluded by the settlement?

A. He did.

Q. And did you participate in some of the conferences and some of the correspondence along with Mr. Lindsey or in addition to Mr. Lindsey?

A. I did, with Mr. Lindsey.

Q. You heard Mr. Lindsey testify here at length?

A. Yes.

Q. With reference to those conferences with Mr.
1476 Lindsey testified he had with either Attorney Alberts or Attorney Hobbs or both, could you add anything to the testimony that he gave as to the conferences which he had with either one of those gentlemen in which you sat also?

A. Or the sequence of events—

Q. Yes, and the order of procedure and the order of the conferences, and so forth.

A. It is very difficult for me to correlate those matters. I know that on December 9th I talked to Mr. Hobbs on the telephone and I think at that time that I told him Automotive required 10 per cent royalty instead of the 3 per cent that he had suggested.

Then, on December 11th, two days later, we had not

heard anything from anyone in this matter, and there was some kind of an Automotive Parts Show or something on in Chicago, and Mr. Wacker had a large suite of rooms at the Blackstone. He was receiving and entertaining various officials of different concerns. I think that he was president of that association at that time, and Mr. Lindsey and I went up to the Blackstone to confer with him and Mr. Wacker, I remember, was quite impatient about the matter because he hadn't heard anything, and I think there 1477 is where Mr. Lindsey had a telephone conversation with Mr. Hobbs—I wasn't present nor was Mr. Wacker—at which time Mr. Lindsey informed me that Mr. Hobbs had hung up on him. Mr. Lindsey was quite incensed at the whole thing. We went back to the office—I don't know whether I am right or not—but my best recollection is that after we went back that memorandum as to terms, the twenty-four hour matter, was dictated, and I believe that a copy or the original of that was sent up to the Blackstone to Mr. Wacker. But nothing came of that because somewhere there Mr. Lindsey either called Mr. Hobbs or Mr. Hobbs called Mr. Lindsey and the whole thing was back, forgetting about that twenty-four hour matter, and there was arranged a conference with Mr. Hobbs at the Union League Club the next day.

I do not recollect Mr. Lindsey's testimony in that respect, but that is my recollection of the sequence of events in there, and I think so far as the other events were all concerned, that my recollection agrees with Mr. Lindsey's exactly.

Q. Do you have anything to add to what Mr. Lindsey said regarding what happened in the various conferences in which you also sat with Mr. Lindsey?

A. Well, question has arisen as to how these other 1478 agreements got into motion, how they got started, where they entered the picture, and I have a recollection on that. I don't think Mr. Lindsey went into that. Whether you want me to relate that—

Q. Do you mean as to who prepared the original proposals, written proposals, and so forth?

A. Yes.

Q. Mr. Lindsey points out you used the word "motion". Do you mean motion or agreements?

A. I mean the start of the thing, how they started, and I was referring to agreements.

Q. Do you recall a meeting at the time the negotiations were going on, December 13, 1940, between Mr. Hobbs and Mr. Alberts and you and Mr. Lindsey?

A. Yes.

Q. I am now reading from Mr. Alberts' direct testimony in this case, page 463 of the record, in which Mr. Alberts testified:

"Well, a statement was made in that conference that I didn't quite understand, and it appeared to me that I wasn't in on everything. And after I left I said to Mr. Hobbs, 'What did Mr. Fidler mean by "done away
1479 with"?' And he said, 'If the matter was settled everything would be done away with.' I said apparently he had some conversations that I wasn't in on, and he admitted that he had lunch with him several times or at least one time that I wasn't present, and I knew nothing about it, that they had some conference I knew nothing about, that he didn't report to me. I thought it was all right. I thought he should explain it to me. He said" meaning Mr. Hobbs in this case—"'Well, frankly, there is a tentative understanding submitted by Mr. Fidler that if the settlement goes through or if a settlement goes through all the parties would have a bonfire of all the exisfing records and that would be the end of it.'"

Now, during the conference of December 13th, had there been any mention of the word "bonfire"?

A. No.

Q. Had there been any mention either directly or indirectly of disposing of any of the existing records in the case?

A. No.

Q. Up to that time had anybody—Mr. Alberts, Mr.
1480 Lindsey or you or anybody else in connection with this case—ever discussed the idea of disposing of evidence, of the destruction or suppression or hiding of it, or anything of that kind?

A. No.

Q. In any of the subsequent negotiations which ultimately led to this settlement, was there any discussion of such matters as bonfires or suppression of evidence?

A. No.

Q. Had anybody ever advanced any such idea during any of the conferences?

A. No.

Q. During any of the conferences in which you took part from the inception of this case to the end of it, through settlement, what is the fact as to whether there was ever any offer made by you or by Mr. Lindsey in your presence or by any other attorney or agent of Automotive in your presence not to prosecute Larson or any of his witnesses if a settlement was made?

A. Nothing like that.

Q. Was any such idea ever advanced by anyone else than Mr. Lindsey and yourself in your hearing?

A. No.

1481 Q. What is the fact as to whether anyone ever asked you or Mr. Lindsey or anyone else in your presence to make a promise to that effect?

A. No one.

Q. Up to the time that the settlement was concluded and the documents exchanged on December 24, 1940, had it ever been reported to you that Larson and Carlsen had admitted perjury to Attorney Alberts or Mr. Joe Johnson?

A. No.

Q. What is the fact as to whether you were ever advised that Larson and Carlson or any of Larson's or Carlsen's witnesses in the Interference had ever admitted perjury to anyone up to the time the settlement was made?

A. Up to the time of the settlement?

Q. Yes.

A. I was never so advised.

Q. When did you first learn that Larson and Carlsen, or at least Larson, had admitted to Mr. Alberts and Mr. Joe Johnson that they had committed perjury in the Interference testimony?

A. When the Third Amended Petition was filed
1482 by Snap-On in this case, there was the positive allegation to that effect, which I took as information in that respect. But Mr. Lindsey and yourself didn't so consider it, and for that reason we held before his Honor, Judge Igoe, a session in which we took Mr. Larson's testimony for discovery, in which he admitted that was the first time he positively admitted he had committed perjury.

Q. And is that the first time that you knew that he had admitted his perjury to Attorney Alberts and Joe Johnson?

A. That is correct.

Q. With reference to the settlement negotiations only, who represented Larson and Precision Manufacturing Company throughout the entire negotiations for the settlement?

A. Mr. Hobbs.

Q. Did Mr. Haight appear in the picture other than at that conference at your home on December 2nd?

A. So far as I knew, he did not.

Q. And during those settlement negotiations Attorney Alberts represented Snap-On, is that correct?

A. That is correct.

Q. Do you know anything about the letter of December 19th, 1940, which Mr. Harry Lindsey wrote to Mr. Alberts?

1483 A. I think that, as I recollect it, Mr. Lindsey, I believe dictated it in my presence, and I subscribed to it in the sense that I did not criticize it, and it went out with my approval.

Q. There was a notice served to take Interference testimony on behalf of Automotive sometime in the middle of December, 1940, is that correct?

A. That is right.

Q. And did you partake in the serving of that notice or was that done by Mr. Lindsey?

A. I knew it was going to be served and I think I furnished to him the information contained—

Q. Do you mean the names of the persons whose testimony was to be taken?

A. That is correct.

Q. Would you find in your file the notice which you caused to be prepared at that time?

A. Yes, I have it here.

Q. Who was the first person designated in that notice?

A. Mr. Thomas Raftery.

Q. Will you tell us why Mr. Raftery was selected to have his deposition taken in that case?

1484 A. We served on him a subpoena duces tecum in which he was to produce the record that he had taken to date respecting the witnesses testifying on behalf of Larson, and I believe that in addition to that I intended to examine him also about the inaccuracies in the Ford deposition.

Q. What was that inaccuracy? That has been mentioned several times.

A. The fact that he had not transcribed the curse words used by Ford.

Q. Who was the second person designated?

A. Mr. Herbert J. Schmid of our office. He had assisted me in the taking of the testimony at Mr. Alberts' office, and he knew the witnesses that had testified, and I was going to inquire of him as to the proceedings over there in general, the matter of instruction of witnesses not to answer, and Mr. Carlsen's testimony had not been transcribed and, about his refusal to answer certain questions; in general, about the conduct of the testimony that was taken. I am not casting any reflection on Mr. Alberts in that respect, but I mean just the general mode of taking the testimony and the exhibits produced, and so forth.

Q. Who was the next person?

1485 A. Mrs. Alice Larson, who was the wife of Mr. Kenneth Larson. There had been a lot of testimony by Mr. Larson respecting his early work and a lot of tests that were carried out in his basement, a lot of equipment down there for testing, and Mr. Whitaker and Mr. Hymes, I believe, had testified about calling there at a certain time on a certain Labor Day or something like that, and I was going to inquire of Mrs. Larson as to those facts and to find out from her whether or not it was in fact at the early date or the later date in 1938 that these things transpired.

Q. Who was the next witness?

A. The next was myself, and I was going to testify in part to the proceedings and the taking of testimony, and also at the same time, not wanting to appear twice in the case, I was going to testify as to what I knew about the dates alleged in the Zimmerman preliminary statement. It has always been my practice to preserve my drafts of specifications, rough drafts which bear a date, and I have invariably used those as evidence of disclosure and first written description of the invention where there is no earlier written description by the inventor.

1486 And then Mrs. Hattie Carlsen was the last witness, and Mr. Carlsen had testified that he had met Mr. Larson in 1934, whereas Mr. Thomasma stated that Mrs. Thomasma—and Mrs. Thomasma verified that—had introduced Mrs. Carlsen to Mrs. Larson in the fall of 1936. I wanted to check that fact through Mrs. Carlsen, and that is the reason she was named as a witness.

Q. The testimony of those persons was never taken, is that correct?

A. Never taken.

Q. Shortly after the notice of taking of that testimony was served, negotiations reopened up for settlement, is that correct?

A. That is correct.

Q. No hearing was ever had as a result of that notice?

A. That is correct.

Q. There has been some testimony here as to the purchase of 260 shares of stock for the sum of $500 from Mr. Thomasma. Can you tell us how that entered into the picture and what was done about it?

A. I think, as I recollect, Mr. Hobbs in his letter of December 6th to me, 1940, predicated his proposition upon return to Precision of the Thomasma stock or our 1487 aid in securing or returning that stock to Precision, and that was kept in mind in connection with all of the negotiations. And when the agreement was finally made there was paid to Automotive $500, and that $500 was turned over to Mr. Thomasma if he would deliver to us the stock that he owned in Precision, which stock was to be turned over to Mr. Hobbs for delivery to Precision, so that Mr. Thomasma would be out of the matter so far as Precision was concerned.

That was all taken care of prior to the time of the delivery of the signed agreements to the respective parties on December 24th. In other words, that was a part of the final termination of the matter and, for that reason and to be able to do that, I contacted Mr. Thomasma and secured that stock before we had received from Snap-On or Precision the $500, giving to him, as I recollect it, our firm check and, refreshing my recollection from my correspondence, I believe that Automotive gave me or sent Snap-On's or Precision's check to Automotive, and they endorsed it and sent it back to us so that we would be reimbursed promptly and would not have to carry that out of pocket expense for Mr. Wacker.

Q. On December 26th, 1940 you wrote a letter to 1488 Mr. Raftery, the Court Reporter, requesting that he turn over certain documents in his possession, or certain testimony and notes to Mr. Alberts. What was the purpose of that letter and why was it written?

A. Well, it was understood that that would be done.

Q. Understood when, where and by whom?

A. I don't know exactly when it was understood, but between the respective parties that were in the negotiations towards settlement. Mr. Hobbs had insisted on the preservation of all the records—I don't know what his reasons back of that were. And we were insistent on preserving all records for reasons which we had in our mind.

Q. What were the reasons you had in your mind?

A. Because we well knew that in the event of any suit against the third party in respect to these patents, that there would be disclosed to anyone defending that suit the Interference situation, and that Larson had been set up as an inventor as of an early date, and we wanted all of the records preserved so that we would not have to start all over again with investigations in the event, after several years time, that defense would be brought forward.

1489 Another reason was that only part of the testimony had been transcribed, and that included the testimony of Mr. Carlsen, who was one of the main corroborative witnesses of Mr. Larson. And the Reporter's note books therefore were necessary in order to preserve the complete picture, and it was my understanding, and I think it was the understanding of everyone, that a Reporter does not keep those note books permanently, and he might destroy them, and for that reason, in order to insure the preservation of these matters, they were turned over to Mr. Alberts. In other words, that was Mr. Alberts' responsibility. He had retained the Reporter. The testimony had not been transcribed, and we thought that he would be the proper one to preserve those books.

Q. Was it ever reported to you by either Mr. Raftery or Mr. Alberts that Mr. Raftery had in fact turned over all or any part of the material which was requested be turn over?

A. Not at that time. I just presumed that it had been carried out.

Q. Particular attention has been drawn in this record to the fact that in your letter of December 31, 1940 to Mr. Hobbs, which has been introduced in evidence, you

1490 stated among other things:

"As to the testimony and Thomasma's statement matters, I am holding everything subject to your call."

What was meant by that statement in that letter by you?

A. That I was preserving those matters and that they would be held subject to his inspection whenever he wanted to see them. He had said that he wanted them preserved, and I had—no one else had the Thomasma affidavit, the original or copy, and I assured him that it would be held subject to his inspection or call or the inspection of anyone that wanted to see them, and they were so held, and shortly after the filing of this suit Mr. Ooms was informed that there was such an affidavit and I very gladly told him that I had it, and I did let him see it, and he did look at it. There wasn't any question about it.

Q. And in connection with that Thomasma affidavit, there was some testimony introduced in this record as to certain corrections that Thomasma wanted to make or you wanted to make or somebody wanted to make. What is the fact about that?

1491 A. There were some corrections, but they were immaterial things, and the reason that I had him read that at that time was because there were some allegations in the Third Amended Petition to the effect that we had improperly issued or taken out, or that I had improperly prosecuted the Larson Application as being—no, in that the facts showed that Thomasma was the inventor; whereas that was contrary to the fact, because I understood that Larson was the inventor of the particular things that were claimed in this case. I wanted Mr. Thomasma to read that statement again to see whether or not he had any change to make in those statements with respect to anything, including—I didn't tell him the matter of inventorship which he had attributed to Mr. Larson. It was merely a check in that respect; and in going through it he found some typographical matters that he wanted to correct, and instead of correcting them on the affidavit, I told him to tell me what they were, and a memorandum was prepared stating what they were, and I think that is in evidence here.

Q. Talking about the preservation of documents and files, there has been some reference made here, I believe, in Mr. Alberts' testimony that you at that time made
1492 a statement that you had searched for a drawing and had been unable to find it. What drawing was that and how did it enter the picture?

A. That drawing was the one which I submitted to Mr. Salmon on the evening of November 27th when he said

that he required further material. It was a drawing of a device similar to the drawing that I had previously submitted to him, except my recollection of it is that it was an assembly drawing showing stone or abrasive carriers mounted by springs or leaf springs to a body of the same type as shown in the drawing that was originally submitted to Mr. Salmon.

I have made every effort to find that drawing. I have had Mr. Thomasma search all of his files, because my recollection is that I returned all drawings that I had to Mr. Thomasma, and I have been unable to find it.

Q. That drawing did not cover any of the subject matter in the Larson-Zimmerman Interference?

A. No, it was a cylinder surfacing hone or tool.

Q. And used for the matter of comparison, on November 27th when Mr. Salmon was in your office?

A. It was used for that purpose, yes.

Q. Had you ever shown that drawing to Mr. Al- 1493 berts at any time during the conference with him?

A. No. The drawing I showed to Mr. Alberts is the drawing which is in evidence here as Plaintiff's Exhibit or Defendants' Exhibit—

Mr. Freeman: 22.

The Witness: 22.

Mr. Smith: Q. 22. How can you be certain that the drawing you showed to Mr. Alberts that Mr. Alberts testified about, was not that drawing?

A. When Mr. Thomasma came in to see me and brought these drawings, he had worked up various ideas in regard to devices of Automotive with which he was quite familiar, and he brought in drawings to me, and one of the drawings that he brought in to me was this particular drawing, Exhibit No. 22, which I witnessed on November 8th, 1940. I did that because I was attorney for Automotive, and I didn't want anything to come up that might involve an embarrassing situation between Thomasma and Automotive because of his submitting to me an invention or tool or something that he considered an invention of that kind. Mr. Thomasma had his name signed on the drawing and I signed mine. When we were getting ready for this conference with Mr. Alberts, I didn't want to do anything—

1494 Q. What conference?

A. November 20th, 1940. I didn't want to do

anything that might prejudice him or lead him in any way, and I had my secretary, Miss Johnson, cut off the bottom of that drawing which bore the signatures and the dates, and make an affidavit to the effect that she did so cut off the drawing at that time, and it was particularly for the purpose of showing it to Mr. Alberts.

1495 Q. Now, at the risk of repetition, Mr. Fidler, what is the fact as to whether you or your firm have preserved everything that was involved in the Larson-Zimmerman Interference hearings or in the negotiations which led to the settlement or that had anything to do with this case?

A. We have.

Q. Has anyone ever requested of you that you dispose of any of those papers by destruction or hiding or anything of that kind?

A. No, sir.

Q. And since the inception of this case in which we are now involved, those papers have remained open to inspection by all parties involved in this case?

A. That is right.

Q. And, as a matter of fact, on our side of the case we have made many requests, both to Mr. Hobbs and Mr. Alberts and Mr. Ooms, and others involved in the case, for the production of certain documents and what is the fact as to whether or not all or almost all of those documents have been produced?

A. We have produced what they requested.

Q. And they have produced what we requested?

1496 A. I think so except I think there were two or three memoranda which Mr. Alberts later produced in connection with his pretrial deposition.

Q. And at the request of either Mr. Ooms or Mr. Freeman, you caused a search to be made at the plant of Automotive with reference to such files as they might have in this case, is that correct?

A. That is correct.

Q. What is the fact as to whether such files were found, produced and open for inspection?

A. They were found and produced and the material they requested was produced.

Q. Now, in so far as your handling of this case is concerned, from its very beginning and in connection with the investigation conducted by the various parties of each

other's files in this case, have you found any documents to be missing which should have been in anyone's files?

A. No, I have not.

Q. On your pretrial deposition, Mr. Fidler, do you recall being asked this question:

"Q. Do you recall informing Mr. Alberts that the aluminum castings set forth in the sales slip of the 1497 Ravenswood-Brass Foundry Company, while genuine, supposedly, covered castings other than those for the wrench which was involved in the Interference?"

A. I think I do recollect that.

Q. I am referring to Page 65 of your pretrial deposition and just ask you to read the one question and ask you if that refreshes your recollection as to whether or not that question was asked you at that time.

(Handing document to witness.)

A. Yes, it was asked.

Q. Now, in Mr. Freeman's interrogatories of Mr. Lindsey yesterday, Mr. Freeman asked Mr. Lindsey about the suggestion that the second Larson application be assigned to Automotive and Mr. Lindsey answered that you were more familiar with this matter.

Can you explain what Mr. Lindsey was unable to explain in answer to that question?

A. Yes.

Q. Go ahead.

A. During the motion period in the Interference, I attempted to bring in claims directed to the feature of a resilient or flexible connection for operating the gauge 1498 mechanism of the wrench. I did that with respect to the particular Larson application involved directly in the Interference in view of a disclosure to that effect in one of the Zimmerman applications involved and the Patent Office held that that subject matter should not be brought into the Interference because it was not disclosed in the Larson application directly involved in the Interference.

Later on, during the taking of testimony on behalf of Larson, it was either developed through the witnesses or Mr. Alberts showed to me, a wrench in which Precision or Snap-On was using that flexible connection; it was the same, exactly the same type of wrench, as that which was involved in the Interference except for that flexible connection, as I recollect it.

And then I was much impressed with the fact because

whereas it was the duty of Snap-On or Precision or Larson, or whoever it was that had this application, to bring that into the Interference, particularly after I had injected the matter, nothing had been done about it and it was held out.

And that was known to me at the time of the negotiations and when we began to look around for some-
1499 thing or some consideration in lieu of the ten-per-cent royalty, I knew about that and suggested that that application which was directed to the subject matter which was involved in Interference, because I had brought it in under a motion in the Interference, be included and that is the reason it was brought in.

Mr. Smith: At this time, if your Honor please, I offer in evidence as Plaintiff's Exhibit 60, a letter addressed by Mr. Fred G. Wacker to Davis, Lindsey, Smith & Shonts under date of June 3, 1940.

As Plaintiff's Exhibit 61, a letter addressed on the letterhead of Davis, Lindsey, Smith & Shonts, by Mr. R. E. Fidler, to Automotive Maintenance Machinery Co. under date of May 31, 1940.

And, as Plaintiff's Exhibit 61-A, a document which is attached to and part of Plaintiff's Exhibit 61.

I have shown these to Mr. Freeman and I understand there is no objection.

Mr. Freeman: Subject to correction for error of the Patent Office document, this being merely a typewritten copy.

Mr. Smith: That is correct and we will, of course, allow Mr. Freeman any check on that he wishes.

1500 (Said documents, were thereupon received in evidence by the court, and marked, respectively, as PLAINTIFF'S EXHIBITS NOS. 60, 61 and 61-A.)

Mr. Freeman: I might say in the meantime, in cross-examination, we will merely state that the motion was denied by the Patent Office.

Mr. Smith: Maybe I had better find out.

Q. Can you answer Mr. Freeman on that last statement that the motion was denied, the motion being 61-A?

A: That was, as I understand it, a motion by Mr. Albaffs to get back into the Interference with respect to a claim which he had failed to make as a result of the motions in the Interference and the Patent Office denied that motion on the ground that his failure to make resulted or

amounted to a disclaimer of the invention set forth in the claims.

Mr. Smith: That is all.

1501 *Cross-Examination by Mr. Freeman.*

Q. Mr. Fidler, did you get a written opinion from Mr. Dunbar?

A. I did not.

Q. And, Mr. Fidler, did you give Mr. Dunbar any written memorandum of a statement of facts upon which you wanted him to predicate an opinion?

A. I did not.

Q. Was this information you gave him in personal conference?

A. It was over the telephone.

Q. Then Mr. Dunbar didn't have the advantage of the 84 page affidavit of Thomasma, did he?

A. No, I merely gave to him the highlights, as you have called them, of that story, the contradictory—the points of contradiction between the Larson story and the Thomasma affidavit.

Q. As told by you to Mr. Dunbar?

A. That is right.

Q. So, whatever Mr. Dunbar told you, it was in response to what you told him?

A. That is correct.

1502 Q. And you had been in this case for some two years, is that correct?

A. Well, the Interference was declared in October, 1939.

Q. The application was filed in 1938?

A. In 1937.

Q. And the conference you had with Mr. Dunbar on the telephone was in December of 1940?

A. That is correct.

Q. And you endeavored to give him the information with respect to your meeting of November 3d at your home?

A. No, I don't think that I mentioned that.

Q. You really didn't expect an opinion from Mr. Dunbar under circumstances of that kind, did you?

A. I really did because I was on the flat of my back at my home and I was trying to conduct business against

the orders of a doctor because I was trying to do everything to facilitate the clearing up of the matter, if possible.

Q. And right at the time you gave Mr. Dunbar the information, expecting an opinion from him, you had had the interview with Mr. Hobbs and Mr. Haight and
1503 you were then in the midst of discussing settlement, were you not?

A. No. I had had the interview with Mr. Hobbs and Mr. Haight and I had written to Mr. Haight on December 6th but that was all the discussion of settlement.

Mr. Lindsey: You mean you wrote to Mr. Hobbs.

The Witness: I wrote to Mr. Hobbs on December 6, 1940.

Mr. Freeman: Q. Well, Mr. Hobbs came out to your home to talk settlement, did he not?

A. That is correct.

Q. And when you wrote him on December 6th, you wrote him in the spirit of settlement, did you not?

A. Yes.

Q. And then when you asked for an opinion from Mr. Dunbar, that came afterwards?

A. That is correct.

Q. When were you informed that Mr. Thomasma had disclosed to Mr. Larson the wrench in question which was the subject matter of the Larson application for patent, which disclosure was made in the basement of the home of Thomasma?

A. I think you have an undated memorandum that
1504 I turned over to you in this matter in which reference is made to that fact. I am not certain when that memorandum was prepared nor am I certain when I secured that information but that information, as I recollect it, came from or through the investigators for the first time.

Q. And the memorandum you have just referred to is dated September 17, 1940, and is Page 6 of Defendants' Exhibit 13, is that correct?

The Witness: May I have the previous question?

(The previous question was read as hereinbefore recorded.)

The Witness: A. According to this, it must have been by September 17, 1940, in a round-about way through a Mrs. Ryan who was one of the stockholders, I believe, or was informed on Precision.

Mr. Freeman: Q. Had you ever interviewed Mrs. Ryan?

A. No.

Q. Did you ever talk to Mrs. Thomasma about September 17th after you had received information from your investigators to the effect that Thomasma and not Larson was the inventor or the "conceptor" of the wrench, 1505 in question?

A. No, I did not.

Q. You did not follow up your investigators' information?

A. I was not in position to because all of those people were antagonistic to me, so far as I knew. As a matter of fact, my information was they couldn't get any information direct from the Thomasmas through the investigators.

Q. And do you want to state now, Mr. Thomasma was antagonistic to you on September 17, 1940?

A. On September 17, 1940, I considered him as an adverse party. He was a director and a stockholder of Precision and the investigators were trying to determine the facts and they had not been able to secure anything worth while through Mr. Thomasma.

Q. And, as a matter of fact, you knew in June, 1940, when Mr. Krichiver came to your office representing Mr. Thomasma, for the sale of Thomasma's stock in the Precision Instrument Company, that Mr. Thomasma was not satisfied with the general situation?

A. No, I don't—no, I didn't know that.

Q. You do recall Mr. Krichiver coming to your 1506 office in June, 1940?

A. Yes.

Q. And he came there for the purpose of selling Thomasma's stock, did he not?

A. No, no, Mr. Krichiver sent a very queer letter to Mr. Wacker, stating something to the effect he had something of interest to tell him and I arranged for an appointment and when Mr. Krichiver came into fill that appointment with Mr. Wacker and me, he referred to the sale of some stock he had and that he could get for us additional shares of stock if we wanted them, it would be much, he thought, to our advantage to have them, but no mention was made of Thomasma at that time.

Q. Well, you knew Thomasma was having his difficulties with Larson and Carlsen, or, putting it the other way,

Larson and Carlsen were having their difficulties with Thomasma?

A. In June, 1940?

Q. On September 17, 1940 then?

A. I am not certain whether I knew at that time they were having difficulties.

Q. And I now read to you the memorandum prepared in your office on September 17, 1940, Defendants' 1507 Exhibit 13, Page 6:

"A. Mrs. Ryan owns thirty-five shares of stock in Precision. Until recently she owned forty shares but was induced by Thomasma to sell five shares to David M. Krichiver, 139 North Clark Street. Thomasma told Mrs. Ryan that he was being crowded by Larson and Carlsen for control of the company and by getting Krichiver into the company, he would have legal aid in the company.

"Mr. and Mrs. Thomasma both told Mrs. Ryan that the Precision wrench was originated in the basement of the Thomasma home at 1101 Potter Road, Park Ridge, Illinois, and that it was invented by Thomasma."

And I now hand you the memorandum and ask whether or not you had that information on September 17, 1940?

(Handing document to witness.)

A. I did; that is my memorandum.

Q. And with that information obtained from John A. Wise and Son, you did nothing further to follow it up?

A. They were working on the case, they were following it up. They were trying to get every bit of information they could. I wasn't working personally as an in-4508 vestigator in the matter. I was too busy at that time to go out and do it myself when I had investigators working on it.

Q. Did you have them then follow up the information that was contained and which they gave you on September 17, 1940?

A. They were following up everything, trying to reach the ultimate end of just when this all happened and how it happened.

Q. And you knew in September of 1940 that Thomasma had that wrench—when I say "wrench," the information with respect to a wrench—from Automotive and delivered that information to Larson?

A. I did not know it. I was informed that that was the way it happened.

Q. And you were informed that was the fact sometime during the month of September, 1940, is that correct?

A. I think that the information was in my hands to that effect at that time.

Q. And, I take it, you likewise did nothing with respect to that information in connection with the Interference?

A. I was doing much. I was having the investi-
1509 gators pursue the matter as far as they possibly could.

Q. And when you received information from the investigators, what did you do with that information?

A. Well, they weren't giving me—weren't able to get much information for me. That is one of the things that impressed me so much about it.

Q. And I now call your attention to Defendants' Exhibit 13, Page 3, with the memorandum bearing date of September 9, 1940, and I am going to read from Page 4:

"About that time Larson, who was his friend then, was having difficulties and his auto supply business was nearly on the rocks. He was looking around for something to do. He happened to go to Thomasma's house one night and he asked Thomasma what he was doing. Thomasma showed him the wrench and Larson asked him if they couldn't work it out together and they decided to do so. That was about two years ago or in the fall of 1938. Then came the problem of distribution. Larson didn't have any money. He wanted Thomasma to put up the money. Thomasma suggested a corporation. Larson was against it because he would have to keep books that people would look at."

1510 And you had that information on September 9, 1940?

(Handing exhibit to witness.)

A. That is information that the investigators had secured for me as of that time, if that is the date of the memorandum.

Do these pages run consecutively?

Q. Well, I will hand you the copy, Mr. Smith, your counsel, gave me, and you might refer to that. They are consecutive and the page I referred to is part of the memorandum dated September 9, 1940.

(Handing document to witness.)

A. That is correct.

Q. And that was the type of information that you

wanted your investigators to get for you when you put them on the job about August 7th or 8th, 1940?

A. I wanted them to get all the facts with respect to the origin and the development of the wrench and how Thomasma entered the picture and where Snap-On entered the situation, the relationship of all parties, yes.

Q. On that same page, Page 4, you notice the typewritten name "Larson" had been erased or a line drawn there through and there above appears in ink, I believe, the name "Carlsen." Does that happen to be your
1511 handwriting?

A. I don't know whether it is or not.

Q. And I notice along in the margin of that page the word "Nov." Does that happen to be in your own handwriting?

A. I don't know. It is written over some way.

Q. And I notice on that same page, still referring to Page 4 of the Defendants' Exhibit 13, that there is an encirclement or a line drawn around that portion which I read a few minutes ago and I would like to ask you whether or not you put that there?

A. I couldn't say. I presume that I did though, and I don't know the reason why.

Q. And I notice also that there are some "astericks," longhand "astericks" on the margin.

The Court: What is an "astericks"?

Mr. Freeman: Oh, one of those little figures.

The Court: "Asterisk," isn't it?

Mr. Freeman: Maybe you are right and I am wrong.

The Court: I thought that might be something new you patent lawyers had.

Mr. Freeman: Q. I now ask you whether you put that there?

1512 A. I think I did. As I recollect, I had this before me in connection with my cross-examination of witnesses and that was to call my attention to something I wanted to cross-examine in respect to.

Q. And you had information that Mr. Carlsen was introduced to Mr. Larson by what individual?

A. I think Mr. Thomasma did that but it came about through Mrs. Thomasma.

Q. When did you get that information either from your investigators or otherwise?

A. I don't recollect that.

Q. You knew that when you cross-examined Larson's witnesses, did you not?

A. I did if it is contained in these notes you have here.

Q. Did you ever confirm that bit of information with Mrs. Thomasma, that is, as to how Larson met Carlsen?

A. I did and, as I recollect, it was either after Mr. Thomasma gave me his statement—it was after Thomasma gave me his statement on the 7th and 8th of November. I am not certain whether it was before or after he signed the affidavit.

Q. And you knew that if Larson had been introduced to Carlsen in 1938 or 1937, as a result of the information given you by Mrs. Thomasma; then, as a matter of fact, when Larson said he had used one of his wrenches on Carlsen's car earlier than that, you must have known that that was wrong?

1513

A. Not necessarily. I have seen witnesses who were quite positive in statements that were wrong. People can be mistaken and I wouldn't rely upon that until I had more definite proof of the fact because there was a matter of a pickle patch involved out in Arlington Heights and a matter of an old Packard car, or something like that. I would want to look into all those things.

Q. Well, you had Mrs. Thomasma's information at that time?

A. That is correct.

Q. And you likewise had Thomasma's information at that time?

A. I had his statement.

Q. And you likewise had the information that your detectives gave you in September, 1940 with respect to Mrs. Brown—Mrs. Ryan?

A. That is correct. I had that information but I still had not proved the fact.

1514

Q. And you likewise had on September 3d, 1940, another memorandum, Page 2 of Defendants' Exhibit 13, that:

"Staellmack told Ed Schultz that Larson and Thomasma were on the outs with each other because Thomasma had invented the wrench and Larson was now trying to freeze him out. Thomasma has a key to the Precision plant and goes there occasionally in evenings but he doesn't work there any more."

You had that information on September 3, 1940?

A. That is the story they gave to me, yes.

Q. From your investigators?

A. From my investigators.

Q. And do you know whether your investigators ever talked to Mr. Staellmack?

A. I don't know; I presume that they did.

Q. Do you know whether your investigators ever talked to Mr. Ed Shultz?

A. I don't know.

Q. Did you ever talk to Mr. Gus Staellmack?

A. I never did.

Q. Now, your investigators were bringing this information into you and during September there were several memorandums prepared in your office with respect 1515 to what the investigators had then found out, is that correct?

The Witness: What is the question?

(Question read by the reporter.)

The Witness: A. You have them here such as I have in my hand now and they were making oral reports from time to time but there wasn't anything I had of any importance other than what you have here.

Mr. Freeman: Q. And these reports though were made from the information given you by John A. Wise?

A. That is right.

Mr. Smith: I suggest instead of calling these "reports," you call them "memorandums" because that is how they were introduced, as memorandums that Mr. Fidler made in accordance with information given him.

Mr. Freeman: I predicated my question on the basis they were made from the information received from John A. Wise and, whether you call them a report or a memorandum, I will not differ with you much on that. We are talking still about Exhibit 13.

The Witness: Yes.

Mr. Smith: All right.

Mr. Freeman: Q. Now, these documents, Exhibit 13, represent and disclose information which your in- 1516 vestigators brought to you?

A. That is correct.

Q. And the dates thereon are the dates representing the time when the investigators gave you that information, is that correct?

A. Well, approximately so. I don't know whether it is

that date or the date I made the memorandum or dictated it.

Q. Well, all of these papers constituting Exhibit 13 were made and known to you prior to your meeting with Thomasma, on the evening of November 3, 1940, is that correct?

A. That is correct.

Q. And can you say whether or not all of the information contained in Exhibit 13 was known to you prior to the time Larson began taking his testimony on August 24, 1940?

A. I had before me this information prior to that time and, if I recollect correctly, I used it in connection with the cross-examination of the witnesses and that is one of the reasons why I conducted, as Mr. Alberts has said, a very searching cross-examination, one of the reasons I did, because I had this information but still they 1517 denied it and their story seemed quite logical in denying it.

Q. After you had received the information from your investigators that Thomasma had disclosed the wrench to Larson, and you then had the names of the individuals referred to in the several documents, Defendants' Exhibit 13, you personally never interviewed any of them, is that correct?

A. I had gathered this information through the investigators, Mr. Freeman; and, if I had gone ahead to take the testimony in the Interference on behalf of Zimmerman, I would have, of course, had to run down all of this, gather it together, talk to these people, call them in as witnesses, subpoena them, to get the story before the Patent Office.

Q. And the information brought to you by your investigators, as taken from these memorandums, supplements Thomasma's affidavit, is that correct?

A. No, the Thomasma affidavit, I would say, would supplement this because it came afterwards.

Q. Is there any information contained in the investigators' reports at variance with the information that was given you by Mr. Thomasma as contained in his affi-
1518 davit?

A. I couldn't answer that question without reading the affidavit and reading these reports and then telling you.

Q. Did you ever make a comparison of the Thomasma

story with the reports that had been given you by these investigators?

A. No.

Q. And you received many reports from the investigators orally, or, at least, reports that your did not make any written recording of?

A. Yes, because they had nothing to report; that happens all the time.

Q. And when they gave you information of importance, material information, if you please, you then made a recording?

A. No, not necessarily.

Q. Well, tell us what other information of a material character was given you by the investigators over and above what is contained in these memorandums that I have been referring to?

A. I don't know. I couldn't tell you that because I saw Mr. Wise many times in connection with that
1519 investigation.

Q. You worked rather closely with Mr. Wise?

A. Well, no, I wouldn't say that. He would be into my office or into our offices several days in a week and when I would ask him—I would see him, he would stop in my room, and I would say, "Anything to advise me?" and he would say, "No," or advise me and go on his way.

Q. And did you ever check the information that was given you by Mr. Thomasma on the evening of November 7th and 8th at your home through the investigators?

A. Yes.

Q. Now, just tell us what information.

A. I can't tell you that because I told them the general story or gave them the contradictory points of that story and they went on their way to check the matter.

Now, one thing I do remember was this, as I said yesterday, was this man Dawson. I thought that he, if it were a fact, I didn't know, there had been said something about him being put out of the way or "Got taken care of," and if that was a fact, maybe there was a good reason for that, and I would certainly like to hear his story, and I
1520 know there was a great amount of time put in trying to locate him, and, as I remember, even tracing him as far as California.

Q. Did Mr. Wise tell you that his investigator Bau-

mann had become rather friendly with Mr. Thomasma prior to September 30, 1940?

A. I did not know anything about that.

Q. Did Mr. Wise tell you that his investigator had talked to Mr. Thomasma as early as September 30, 1940?

A. I think probably so but the information that I was getting was to the effect that Mr. Thomasma was very close mouthed and they couldn't get any information directly from him and it was making it quite difficult to proceed in the investigation.

Q. And after September 30, 1940, you made no memorandums whatsoever of any of the reports orally given you by Mr. Wise?

A. Well, I don't know exactly when the last four pages of Defendants' Exhibit 13 were made but I believe that that was made up shortly before the taking of testimony on behalf of Larson.

Q. That is the last four pages?

A. That is right. I am not certain as to that but I think they were made up at that later date and if
1521 that contains information there over and above the other, then it would be additional information.

Q. Incidentally, the first eight pages, when taken from your files, were original or ribbon copies and the last four pages were carbon copies. Now, as a matter of fact, when you look at the last four pages, isn't it true that that contains the information you gave to the investigators at the outset?

A. No, I don't think so.

1522 Q. Isn't it true that the information of the last four pages is of a general nature, whereas the particular memorandums dated September 3, September 9, September 17, and September 30th, 1940 are all in detail?

A. Well, I think they speak for themselves. They may appear that way. In any case like that I make notes, sort of an outline of my case as I go along, so that anybody else could pick up the case and have some information as to what I had.

I don't know when this was dictated; I have no idea. I tried to refresh my recollection in every way, and I have been unable to determine, prior to the time of giving my testimony here.

Q. And you had information on September 30th, 1940

from Mr. Larson's ex-partner that Larson did not start any work on a wrench until 1938, did you not?

A. There is a notation to that effect in the memorandum dated September 30, 1940. That is information that had come to me through the investigators.

Q. And your investigators received that information from Jack P. Kamppenin; is that correct?

A. I don't know; I assume so.

Q. Well, I am referring to the memorandum.

1523 A. Yes, they informed me that it came from Kamppenin.

Q. And you had information from your investigators on September 30th that he, Kamppenin, knew nothing of the Precision wrench until late in 1938, when Larson and Thomasma started working on the wrench during the evenings, in Larson's or Thomasma's basement; isn't that correct?

A. That is what this report, memorandum says; and that is information that had come to me through the investigators.

Q. And you also had information that Larson and Kamppenin were very close friends; you had that information, page 8 of your memorandum, Defendants' Exhibit 13?

A. That information came from the investigators, yes; and I don't see anything here to indicate that it was the result of an interview with Mr. Kamppenin. So I cannot say as to whether it came directly from Mr. Kamppenin or from someone else.

Q. Well, at least, we have the report of the investigators that gave the sum and substance of the information thus far obtained?

A. That is correct.

Q. And the reporting of that information on September 30, 1940 was accepted by you as information given to you by your investigators; is that correct?

1524 A. That is right.

Q. And you had every confidence in your investigators?

A. Yes. That is, now, are you inferring that I had every confidence in all the information they brought to me, and I accepted it as absolutely a proven fact, anything that they told me?

Q. I am not trying to infer anything; I am just asking

you a question, whether you had confidence in your investigators.

A. I had confidence; and I think I testified in my pre-trial deposition as to their conduct, and so forth. But as to the information that they would bring to me, I certainly would have to prove that information; I would have to prove it through investigation; further investigation.

Q. By whom?

A. By the parties that were involved. For example, I would have to interview Mr. Kamppenin and put him on as a witness, if I wanted to go into that.

Q. You never interviewed any of these people after you began receiving reports from your investigators?

A. No; it had not reached the point where we were going to take testimony. And I might add there that I had that information, and it might be, it might well
1525 be that I would bring it out through the cross-examination of these witnesses. I didn't know that they were going, at the time I was getting this and when I went to cross-examine them,—that they were going to conceal from me the fact, if it were the fact.

Q. I am going to read page 8 of the memorandum, Defendants' Exhibit 13, dated September 30, 1940: "Although Larson and Kamppenin were very close friends while working for Auto Parts Company in Des Plaines, and even though they pooled their resources and ability and brains in an attempt to make outside money, Larson never once mentioned a wrench to Kamppenin prior to 1938. Larson and Kamppenin needed something very badly to manufacture, to help them get back in condition to make some money; but notwithstanding all this, Larson never mentioned anything about a wrench. Naturally, if he had known about the wrench at that time he would have brought it forward as the answer to their problem."

Now, that was the memorandum prepared by you, or dictated by the investigators to your stenographer.

A. It was prepared by me from information that came from the investigators.

Q. Might I ask now whether all of the first nine
1526 pages of these reports of September 3, 9, 17, and 30 were prepared by you?

A. You mean all of the pages in Exhibit 13?

Q. Those that are dated, reports.

A. Yes, they were all prepared by me.

Q. When you testified on pretrial, had you at that time had your interview with Mr. Salmon? You recall, Mr. Salmon testifying that prior to May 3, when Mr. Olson and myself went up to his office, you and Mr. Hibben talked to him?

A. I do not recollect for certain, but I think I talked to him after that.

Q. And you recall now that you did write to Mr. Wacker after you interviewed Mr. Salmon for the first time that he, Salmon, indicated that there were many similarities in the drawings?

A. Well, I recall, not just now, but shortly after I gave my deposition, and as I recall it, during the giving of my deposition the letter that I had written to Mr. Wacker respecting Mrs. Keeler was brought forward; and I saw that letter later, read it later and refreshed my recollection in that respect. As a matter of fact, if you will get my pretrial deposition a little further on, on
1527 page 61, I believe you will find that I mentioned something that I did not recollect for certain about that.

Q. And when you retained a handwriting expert, you were out to get an opinion from the handwriting expert so that you could use it in your conference of November 28, 1940, when you were going to confer with Messrs. Johnson and Alberts?

A. I was going to give them all the information that I had at that time; yes; that is correct.

Q. I am just asking whether or not you tried to get the opinion so that you would have it at that time.

A. That is correct.

Q. And you went to Mr. Salmon's office on the 22nd?

A. That is correct.

Q. And this is a correct report of that meeting,—and I am reading from your letter of November 23, 1940, to Automotive Maintenance Machinery Company: "While I was in conference with Mr. Salmon he made a cursory examination of the drawing in question, in comparison with another drawing made by Thomasma; and he said that there were many items of similarity which indicated that both drawings were made by the same man. He
1528 of course would not express himself finally in the matter until he has made an examination of the kind usually made by handwriting experts."

That is a correct statement, is it not?

A. That is correct.

Q. And Mr. Salmon asked you for some additional information at that time, did he not?

A. Yes; he wanted—I had at that time, I think, the copy or photostat of the Larson drawing which Mr. Alberts had given me, which was of reduced size; and he wanted something that was enlarged, more nearly the size of the drawing Exhibit 22; and I secured that for him and handed it to him.

Q. And you had a promise of Mr. Salmon that he would have a report for you prior to your meeting on Thursday?

A. Well, I don't know whether I had a promise or not; but as I recall it, I did get in touch with him on the 27th; and he did not have a report for me, but he wanted to see some other work of Thomasma's.

Q. Now, so that we get this straight, you first met Salmon on the 22nd?

A. That is correct.

Q. And that would be Friday?

A. I don't know what day it was.

1529 Q. And you were to get Mr. Salmon some additional papers by the following Monday, so that he could get you a report and have it to you by Thursday, so that you could have that information when you had your meeting on November 28, 1940?

A. I was to get the additional information—and the idea was, yes, to have something for me by the time of that meeting.

Q. And the additional information was to be gotten to Mr. Salmon on the Monday prior to the meeting that you had with Messrs. Johnson and Alberts?

A. I do not recollect that.

Q. I now read from your letter of November 23, 1940, addressed to Automotive Maintenance Machinery Co.: "I am getting the necessary materials to him this coming Monday, and he has promised a report before Thursday."

Does the letter of November 23, 1940, Defendants' Exhibit 92, refresh your memory with respect to the hand writing episode?

A. That is correct.

Q. And do you now recall whether or not you got the

information that Mr. Salmon requested on the 22nd to him on the following Monday?

1530 A. Yes, I got the enlarged drawing, as I recollect it, to him at that time.

Q. And Mr. Salmon worked on the documents that you delivered to him on the following Monday, which was the 25th, on the 26th and 27th; is that correct?

A. I don't know when he worked on them.

Q. Do you recall his testimony to the effect that his work sheet, that envelope he had, indicated that he did some work on the 25th and then again on the 26th; and he met you in the late afternoon and evening of the 27th of November?

A. Something to that effect; I do not recollect exactly.

Q. And I would like to have you refresh your recollection now, whether Mr. Salmon, after you delivered to him the information on November 25, asked you either on the 25th or 26th for any additional information?

A. Not that I recollect.

Q. And you do not recollect in the testimony of Mr. Salmon that he asked for any information over and above what you delivered to him on the 25th?

A. On those two days?

Q. On those two days, the 25th or 26th of November.

1531 A. No, I do not recollect; on the 27th, though, he did request some additional information, as I recollect.

Q. Then, on the 27th Mr. Salmon delivered to you his tabulation of similarities, in the form of his work sheet, which is now Defendants' Exhibit 12; is that not correct?

A. That is correct.

Q. And, Mr. Fidler, do you recall your pretrial examination with respect to that document, Defendants' Exhibit 12?

A. No, I don't know exactly what I said about it. Whatever I said is what I said here, I would say.

Q. Do you recall my asking you,—and I am now reading from your pretrial deposition, page 58: "What did Mr. Salmon tell you with respect to the work that he had done when he delivered to you Snap-On Exhibit 12?. Answer: He explained that this was his work sheet, and that what was indicated on there was similarities between the two drawings. But he was not satisfied with that; he wanted something else in the nature of a drawing." I be-

lieve he explained that he was up against a different kind of a situation in treating drawings than in treating handwriting; and that a man might be a poor draftsman at one time, and a month later might be much improved and show differences in work; and that that was the reason why I showed him this other drawing. And if I recall correct, in looking at that other drawing he found some discrepancies, and told me that he could not give me an opinion in the matter without further investigation."

Now, as a matter of fact, Exhibit 12 was delivered to you to show the many similarities.

A. He brought it with him because he had not yet completed his work; and he was going to give me the benefit of whatever he had done, for my conference the next day. But when he saw this other drawing and found some additional dissimilarity, or something, he was further away from advising me; as I interpreted his statements, than he had been at any time before.

Q. But up until the time you gave him the additional or third drawing, the missing drawing, he had not asked for any other drawing, had he, over and above what you had already furnished him on the 25th?

A. I think that he asked me—as I recollect it, he asked me that on the 27th.

Q. So that his work sheet, Defendants' Exhibit 12, he gave to you to show the similarities between the Larson drawing, Exhibit 27, and the Thomasina drawing, which you gave him for purposes of comparison, which is 1533 now Defendants' Exhibit 22; is that not correct?

A. No, he did not do that at all, because I did not understand, and I do not understand at this moment, what that means, that sheet.

Q. Your board Mr. Salmon testify that that sheet was merely a location sheet, so that he would have something to look at, and that he would not need to check over the drawings in great detail to find certain figures and words, and so forth; do you recall such testimony?

A. He testified something to that effect.

Q. And do you also recall now your testimony with respect to Defendants' Exhibit 12: "He explained that this was his work sheet, and that what was indicated on there was that there were similarities between the two drawings"?

A. Yes.

Q. And I have not read your full answer; I did that a minute ago, so I am not going to repeat.

A. That was correct; I am just stating what my understanding, what Mr. Salmon had told me; I don't know what he intended to explain to me.

Q. And your explanation as to what he told you, at least, is different from what Mr. Salmon told us the other day, when he was on the stand?

1534 A. I don't think so; I don't think there was anything different from the fact that there was many similarities indicated.

Q. Now, did Mr. Wacker call you on the morning of November 4, after Mr. Travis called him, between the hours of 1:00 a. m. and 2:00 a. m., that Mr. Thomasma would go through with the matter?

A. Not that I recall; my recollection is that I did not get a call to that effect—or not to that effect, a call to the effect that Mr. Thomasma wanted to talk to me, until the 7th of November.

Q. When did you arrange for Mr. Wacker to prepare a memorandum of his conference of November 3, 1940?

A. I believe that I told Mr. Wacker on the day of that conference.

Q. And have you had occasion within the last week or two to re-read Mr. Wacker's memorandum of November 5, 1940?

A. I have glanced through it; yes.

Q. And does it accurately, to the best of your recollection, state what transpired on the evening of November 3, 1940?

Mr. Smith: May I suggest that the witness be given a copy of the letter, so that he may answer definitely?

1535 The Court: I think that is only fair.

Mr. Smith: (Handing document to the witness.)

The Witness: A. You are asking about what transpired there?

The Court: Whether that is an accurate description of what transpired.

Mr. Freeman: Correct.

The Witness: A. I think that is a correct, as I recollect it, statement of what transpired.

Mr. Freeman: Q. Is there anything, Mr. Fidler, that you would like to add to that, in order that we have a com-

plete picture of the meeting of November 3, or anything that you want to modify?

A. Well, none other than I have given in my testimony already here, as to what transpired, when I testified on my direct examination.

Q. Now tell us exactly what you told Mr. Thomasma, Mr. Krichiver, and Mr. Travis, as to what the facts were? —And so that it is definite, I refer you to page 3 of the memorandum, and I read: "You and I both stated definitely that we knew the facts in the case, and stated them as we knew them to be."

1536 Now I would like to have you tell us just what you stated to be the facts as you knew the facts to be.

A. Well, I do not recollect everything that I said. I think, as I stated yesterday, I can give you the gist of this thing. They were acting very mysteriously, and sort of indicating that they knew that there was something wrong; it would be to our benefit to buy that stock, or that we should buy the stock because Mr. Thomasma might destroy the value of the stock.

And then in trying to draw out from them what they meant, I recited things that I knew about the story; for example, Mr. Thomasma's connection with Snap-On—or with Automotive; his connection with Precision and the fact that Precision was making a wrench that had been taken by Snap-On, that Automotive had lost the business of Snap-On, and that general story; that is, information that had been told to me in connection with investigation matters.

Q. And didn't you tell them then that the Snap-On-Precision wrench came from Automotive by way of Thomasma to Precision, and then to Snap-On?

A. I told them that—I do not recollect whether I put it that way, or I said that; but I think that I would

1537 have told them that I had been told that that was the fact.

Q. And that fact you had made known to you prior to November 3, 1940?

A. I had been given information, or told about that prior to that time; and I knew, of course, that Thomasma had been connected with Automotive and was associated with Zimmerman in the development of the wrench; I knew that fact.

Q. Well, according to the information you had received from your investigators, in accordance with the

memorandums that we have here, Defendants' Exhibit 13, you stated, did you not, to them that the wrench had been brought from Automotive to Precision and handed back to Snap-On; did you not?

A. I think I probably did. I did everything to try to bring out from them, to get a hint from them as to what they meant by the fact that we were being double-crossed, or that there was something wrong in this picture, what this mysterious thing was that they wanted to tell us about.

Q. Well, isn't it a fact that you knew as a fact that 1538 the wrench sold by Snap On was brought to Precision from Automotive by Thomasma?

A. That was the information that had been given to me; I didn't know what the real fact was back of that. And that is the reason why I was investigating, the reason why that I continued investigation after the Thomasma statement.

Q. And instead of my using the word fact, if I had used the word information, then you would agree with me; is that correct?

A. As to matters that had been told to me by investigators.

Q. By people whom you were paying to find out the facts?

A. To find out the information.

Q. And if I said information, then, instead of facts, you would agree with me?

A. In respect to what?

Q. With respect to the information that you were getting from your detectives or investigators, for which Automotive was paying its good money.

A. Those were matters that they told to me; and I could not accept those as facts. It was information coming to me through the investigators, and I could not 1539 accept it as fact, and I would not accept it as fact until the matter had been gone into and those people that would support that had testified.

Q. Now, in Mr. Wacker's report of November 5, Defendants' Exhibit 11, you stated—or, rather, Mr. Wacker stated that, "Both you and I,"—meaning yourself, Mr. Fidler and Mr. Wacker?

A. That is right.

Q. "Stated definitely that we knew the facts in the case,

and stated them as we knew them to be." And you are now telling us that what you gave them was information as distinguished from the facts; is that correct?

The Court: Oh, he gave them the information he got from these detectives. Let us get along to something else.—That is what you said, isn't it, Mr. Witness?

The Witness: A. That is correct.

The Court: All right; let us get on to something else.

Mr. Freeman: Q. Mr. Fidler, I would like to have you look at record page 1039, your answer to the direct question—strike that, please.—

Now, you then, after the meeting of November 3, 1940, had a meeting with Mr. Alberts on November 26th; is that correct?

1540 A. That is correct.

Q. And you gave Mr. Alberts some general information at that time with respect to what information you had; is that correct?

A. I had the Thomasma affidavit at that time, and I gave him the opportunity to read it. He didn't want to, but I told him what the contradictory matters were, as set forth in the affidavit.

Q. And a meeting was arranged for on November 28th?

A. That is correct.

Q. 1940, at your office?

A. That is correct.

Q. And at that time you told Mr. Johnson and Mr. Alberts, "According to the information that I had of a wrench that had been brought from Automotive to Precision and handed back that way to Snap-On, a wrench very similar to the one that we had made for Snap-On,—when I say we I mean Automotive; is that correct?"

A. That is correct.

Q. And that was the information that you gave to Mr. Alberts and Mr. Johnson on November 28, 1940?

A. I stated something to that effect; in response to Mr. Johnson's declaration that he was there with clean 1541 hands, and in view of all that had gone before, as you will see from the correspondence. You would not expect me to stand silent when he made that statement.

Q. And you made that statement to Mr. Johnson and to Mr. Alberts on November 28, 1940, the statement that I just read?

A. Something to that effect. I think that I said I could not remember exact words, or anything like that. But that was the thing that I was trying to convey to them.

Q. You wanted to get across to Mr. Johnson and to Mr. Alberts that you had information that the wrench which Snap-On was then selling came to Snap-On from Automotive by way of Thomasma and Precision; is that correct?

A. I don't know whether I wanted the information; but I think that any reasonable person knowing that general fact respecting Thomasma, and seeing the two wrenches, could not deduct anything else. I said from the beginning I could not believe that Snap-On would be in an Interference with Automotive. You read my letters; and it was just an honest belief on my part.

Q. I am reading your testimony; and you made
1542 that statement according to the information that you have?

A. That is correct.

Q. Now, as a matter of fact, if that information were correct you would have to know that Larson's dates, going back to 1934 and 1935, were incorrect?

A. No.

Q. In other words, you are telling us that you had information that Larson's or that Snap-On's wrench came from Automotive by way of Thomasma and Precision; you stated that from the information you had, correct?

A. Yes; but let me tell you one of my theories of that case was that possibly if Larson had that wrench at an early date, what he had done amounted to nothing but an abandoned experiment. And in cases of abandoned experiments the man that had it and dropped it is stirred into activity later on when he sees somebody else doing something. And I have always had in mind that if that story were true, that maybe if Larson did have something that time, maybe Thomasma connecting himself with Precision and showing him what had gone forward there at Automotive, might have stirred him into activity and indicated to him that he had a pretty lucrative spot to
1543 land with Snap-On.

Q. And you are now telling us that both statements could be correct; that is, the information that you gave to Mr. Alberts and Mr. Johnson November 28th, 1940, and also that Larson had invented the wrench, as he testified, in 1934.

A. It is a question of what you mean, invented; I think if a man has abandoned something he did not invent anything. He might well have done something back in 1934.

Q. Could the Larson story, as you heard it delivered to you when you took the testimony of Larson, be true; and at the same time, the statement that you made to Messrs. Johnson and Alberts be true?

Mr. Lindsey: What statement is that?

Mr. Freeman: That which I have read, and I will read it again: "According to the information that I had of a wrench that had been brought from Automotive to Precision and handed back that way to Snap-On, a wrench very similar to the one that we had made for Snap-On,—"

Mr. Smith: Will you read the first part of the question?

(Question read by the reporter.)

1544 The Witness: A. I don't know what you are driving at. That is the way that I see it, and the way that I considered the matter.

Mr. Freeman: Q. Do you recall testifying that when the meeting opened there was some question about clean hands on the part of Snap-On?

A. Yes.

Q. And did you recall that you testified,—and I will read, for the sake of quickness: "I know that shortly following that statement I challenged it by reviewing the facts that I knew respecting the relationship of Snap-On and Automotive, and Snap-On and Precision and Thomasma in the picture; and I stated that in view of those circumstances I did not feel that Snap-On was very well circumstanced in the picture, or in the situation?"

A. That is correct.

1545 Q. Mr. Fidler, the first time that you learned of Thomasma's authorship of the drawing was when he stated to you, at the bottom of page 19 of the affidavit: "Yes, I know all about those developments—that drawing made by the high school boy—I made that drawing. John Thomasma, my brother, watched me make that drawing."

Is that correct?

A. My recollection is that is correct, either on the 7th or 8th of November, 1940. I believe it was the 8th.

Q. And the first time that you heard it was when he answered in accordance with the answer that I read just

a moment ago and as contained on the bottom of page 19 of his affidavit, which is now in evidence as Defendants' Exhibit No. 21, is that correct?

A. That is my recollection. I now think that I did have some preliminary discussions with him on the first evening, but I am not certain whether he told me on that first evening about the making of that drawing. I don't 1546 believe that he did.

Q. Mr. Fidler, what took place between that answer on the bottom of page 19 of the Thomasma affidavit that I just read that necessitated your stating to him, and I now read from the top of page 20 of the affidavit:

"Mr. Fidler: You are here to tell the truth, and if it hurts you can't help it. You want to clear yourself in this picture. You don't think you have done any wrong, but you want to show you haven't because somebody would like to make you the goat in this thing?"

A. I have no recollection, but I was getting this statement from this witness whom I expected to use as a witness in the Interference, and I wanted his statement to come forward as freely and in a way that I might rely on it to the greatest extent.

Q. Well, he had already made the statement with respect to the drawing, hadn't he?

A. I don't know what you are—

Q. He had already made the statement. You have the affidavit there.

The Court: What page?

Mr. Freeman: Page 19. For the sake of clarity I 1547 will restate the question:

Q. You had already received information from Mr. Thomasma in answer to your questions in accordance with his answer contained at the bottom of page 19, and what I would like to know now is what brought about your statement contained on the top of page 20 of the affidavit?

A. I don't have any idea.

Q. Were there any conversations or anything between the answer on page 19 and your statement contained on the top of page 20?

A. There may have been. I couldn't say.

Q. Your stenographer who took down the statements made by Mr. Thomasma in response to your questions still has her notes, has she not?

A. That is right.

Q. Have they been checked recently?

A. No; not that I know of.

Q. Do you know whether or not those notes run consecutively as the affidavit runs or is there information or notes that were not transcribed for any reason?

A. As I recall, they run somewhat in the order that is in the affidavit. Now, I know that there were discus-
1548 sions, matters that would not be material in the statement which I would say from time to time, "You don't need to take that," and I think, though, that the notes that were taken run pretty near as it is in this statement.

Q. But there was conversation between questions and answers so that if you didn't want that to be recorded you so advised your secretary?

A. That is right, if I thought it wasn't something material or to the general story that was being told. He would get off onto various subjects during the talk that I had with him.

Q. And throughout the Thomasma affidavit, Thomasma showed a startling familiarity with all the details of the development of the Larson wrench; did he not?

A. Well, I don't know what you mean by "startling". But he indicated to me, from what he was telling me, that he did. For example, the drawing, the code marking on the wrenches and things like that.

Q. And Mr. Thomasma was the first individual to give you the code marking, that word which corresponded to the numerals "1" up to "9" and "0", is that correct?

A. That is correct. I think that is about the only
1549 thing of Mr. Larson's testimony that he did not have a clear and immediate and logical explanation of.

Q. And Mr. Thomasma never saw the exhibits in the Interference except in the form of the small photographs that you had, is that correct?

A. That is all, as I recollect it.

Q. You showed him a small photograph?

A. I did, during our discussions.

Q. And he was able to tell you all about the details of Larson's exhibits; is that correct?

A. He told me considerable in detail.

Q. Do you recall on page 13 of the affidavit, that Thomasma told you that several of the first spring bars were heat-treated at Lindberg's?

A. I asked him that question. He must have told me, because I wouldn't have—

Q. Well, you find it in the affidavit, do you not?

A. Yes.

Q. And Lindberg's is a regular heat-treating plant, that is, a plant for heat-treating metals here in Chicago?

A. That is my understanding.

Q. Now, did you check with Lindberg's to see when that work was done?

1550 A. I did not.

Q. Did you have your investigators check with Lindberg to see when that work was done?

A. I gave them the story and I don't know whether they checked it or not. Please understand me, that I turned the information that I had gained over to the investigators and kept them going on this thing, trying to get together facts, and one of the things that we were mainly interested in at the time in getting was trying to contact Dawson because I thought that he might well be a key in the picture somewhere, if he had been taken care of or gotten away so we couldn't call him as a witness.

Q. And all of the attention was drawn to this man Dawson, is that right?

A. Not all of it, no. In part, that was one of the main things. That to me was a very outstanding circumstance.

Q. And did you check with the bank at which Larson and Thomasma borrowed $100 to see when they bought the South Bend lathe mentioned on page 50 of the Thomasma affidavit?

A. I don't know whether they did or not. I didn't

1551 myself personally, but I know that the investigators knew of that, and I don't know whether they checked that at the bank or not.

Q. You have no information with respect to what the investigators did with the information that you gave them, that is, the leads that you gave them that you received from Thomasma?

A. No, only except they were trying to check the various matters. Another thing I know they were trying to check was in respect to some of the people who were supposed to have been contacted for the purpose of trying to distribute the wrench for Mr. Larson. I believe Mr. Thomasma or somebody, in this affidavit referred to

a man by the name of Clark. I know that they were trying to locate those people.

Q. And do you recall that Mr. Thomasma said, on page 53 of the affidavit, that Stone, a manufacturer's representative, could verify anything that he, Thomasma, said? You find that on page 53, do you not?

A. That is what Mr. Thomasma said to me.

Q. Did you or your investigators check with Stone to verify that which Mr. Thomasma said could be verified?

A. I don't know whether the investigator did or not, but I know that Stone's name was given to the investigator.

Q. Did you or the investigators check with Mrs. Thomasma as to the dates and information given you by Mr. Thomasma?

A. I talked to Mrs. Thomasma.

Q. When?

A. After Mr. Thomasma had given his statement to me.

Q. And prior to the time that you had a meeting with Mr. Alberts on November 20th, is that correct?

A. No, I don't think so.

Q. Was it prior to the time that you had your meeting with Mr. Alberts and Mr. Wacker in your office on November 28th?

A. I am not certain whether it was or not.

Q. Mrs. Thomasma was employed, that is, she was working, was she not, in November of 1940?

A. She, as I was informed, did do some work around helping people in their home, and particularly some attorney in Park Ridge, whose name I don't now recall.

Q. And Mrs. Thomasma was brought to your office when Mr. Thomasma went there on November 28th when had your meeting with Messrs. Johnson and Alberts, is that correct?

A. She wanted to come in, and I told her it was o. k.

Q. And did you have any purpose in having her come in?

A. No.

Q. Did you check with her then as to the information that Mr. Thomasma had given you?

A. I may have done so at that time. The only information that she could give to me was that she had

been instrumental in bringing Carlson and Larson together in the first instance, because she had gone to Carlsen's Beauty Shop and she knew Carlsens.

Q. And on page 56 of the Thomasma affidavit he says that Larson made an effort to sell the wrench to a Mr. Clark, with a place of business on Indiana Avenue, south of 22nd Street in Chicago here. Did you or your investigators check at the Clark place of business?

A. I know that they were told to make that check.

Q. And you do not know whether any check up was made?

A. I have no information as to any results that they obtained.

Q. And on page 61 of the affidavit you find that Thomasma said that the dial for the second wrench was made by the Chicago Thrift Company, and I now ask you
1554 whether or not you or your investigators checked with the Chicago Thrift Company about Larson's or Precision's purchase of dials from them?

A. I have no recollection of that.

Q. On page 67 of the affidavit you reminded Thomasma that he had not—that you, Mr. Fidler, had not told him anything about Larson's testimony. That is true, isn't it?

A. I wouldn't have stated it, I don't think, unless it were true.

Q. And you didn't tell Thomasma anything about the coding of the wrenches that had been introduced in evidence in the Interference, is that correct?

A. I did not. That came to me from Thomasma.

Q. And Thomasma gave you all of the information in detail with respect to the exhibits in the Interference, as to where parts were bought, where parts were heat treated, without any information having been given to him by yourself, is that correct?

A. That is correct.

Q. Thomasma's statement with respect to the coding was correct was it not?

A. I don't know. I don't know to this day.

1555 Q. You found the code marking on the Interference exhibits, did you not?

A. Yes, the word worked out that way, but I don't know whether the background and the origin of the word came about that way or not; for all I know, Mr. Larson and Mr. Thomasma worked out that code marking.

Q. But Thomasma knew the details of the code marking?

A. He knew what that code marking meant with respect to those wrenches and the specified numbers of wrenches in view of the code marking.

Q. So that you could check the Interference exhibits and determine which wrench was first and which wrench was second, and so forth?

A. Yes, according to that code, as given to me by him.

Q. Did you ever check the company that used that code marking?

A. No, I don't think I did.

Q. Do you recall that he worked in a place where they had secondhand machinery and they used that code?

A. He did give me the names of some of the men that he remembered, that he thought lived here and there, whose names I gave to the investigators. That is as far as the checking would go. I don't recollect that we
1556 found the company by the name as such, but he remembered the names of some of the men, and I knew that they were turned over to the investigator.

Q. And you have no recollection now whatsoever as to what information the investigators gave you when you gave the investigators the name of Lindberg, which is a company here in Chicago, and the Clark Company, here in Chicago, and the Chicago Thrift Company, in Chicago? That is, you have no recollection whatsoever?

A. I don't know whether they had gotten around to that point in the investigation, because I do know that they were making every effort to try to locate Dawson, and I think that Mr. Wise did make a very strenuous effort to find Dawson.

Q. After Thomasma left your home on the night of November 8th, what further communication did you have with him before he executed the affidavit?

A. I think that about the 12th of November, or the 13th, somewhere there, he communicated to me by telephone the information contained in the last two pages of the affidavit, Plaintiff's Exhibit No. 21.

Q. Was that information, that is, that which is contained in the last two pages of the affidavit, given
1557 you directly by Mr. Thomasma or did it come through your investigator, Mr. Baumann?

A. It is my recollection that Mr. Thomasma gave it

to me over the telephone. As I said before, in either my pre-trial deposition, or in testifying here, I don't think—I am quite sure I would not have included that in the affidavit unless I had talked to or checked it with Mr. Thomasma.

Q. Do you recall that Mr. Thomasma testified that Baumann got that information and gave it to you?

A. I don't recollect. I believe he so testified, but my recollection is that Mr. Thomasma gave me that over the telephone.

Q. And who made the arrangements for Thomasma to come to your home on the evening of November 7th?

A. I received a telephone call. As I said, I don't know whether it was from Mr. Thomasma or from Mr. Travis—I think it was one of them—that they would like to see me at my home, or that Mr. Thomasma would like to see me at my home that evening.

Q. Did you know what he was going to see you about?

A. No, I thought maybe he was going to give me some of the information about which they had been so 1558 mysterious the preceding Sunday.

Q. When did you make the arrangements for your secretary, Miss Mildred Johnson, to come out to your home?

A. I made that before I left the office. I asked her to be there just in case he was going to give me information.

Q. And when you asked Miss Johnson to come out to your home you had no idea of what Mr. Thomasma was going to convey to you by way of information?

A. I did not.

Q. Mr. Fidler, you have a copy of Mr. Lindsey's letter to Mr. Alberts of December 19, 1940, Defendants' Exhibit No. 68, before you. That letter had your full approval?

A. That is right. As I said, I think I was there when Mr. Lindsey—I am quite sure I was there when Mr. Lindsey dictated it, and I didn't offer any objection to it.

Q. And you gave Mr. Lindsey the information which he relied upon to write the letter of December 19, 1940, is that not correct?

A. I had told Mr. Lindsey the whole situation that confronted me, and from that he had made his own deductions, I suppose. I heard him testify here about it.

1559 Q. And those deductions that Mr. Lindsey made, as contained in the letter, Defendants' Exhibit No. 68, met with your approval on December 19, 1940?

A. That is correct.

Q. And the letter of December 19, 1940 by Mr. Lindsey stated the facts or the information that you wanted to convey to Mr. Alberts, and in turn to Mr. Johnson of Snap-On, and likewise to Mr. Hobbs, is that correct?

A. I don't know all that was in Mr. Lindsey's mind.

Q. Well, I am just asking as to whether the letter states the facts.

A. I think so.

Q. Will you tell us what you mean by Mr. Johnson, Joe Johnson and Harry Alberts holding up the issuance of the Zimmerman patent without the slightest justification?

A. Where do you find that?

Q. I find that on page 2 of the letter, Defendants' Exhibit No. 68.

Mr. Smith: I understand you are asking Mr. Fidler for his personal interpretation of those words. He did not write the letter.

Mr. Freeman: He said he ok'd it as though it were his letter.

1560 The Witness: I say I do not know what was in Mr. Lindsey's mind, but the letter was dictated, I believe, in my presence and I offered no objection to the letter.

Mr. Freeman: Q. And it also had your approval?

A. That is right.

Q. In your pretrial deposition, when you were asked with respect to the holding up of the issue of the Zimmerman patent without the slightest justification, and I now read from page 9 of your pre-trial deposition:

"Question: You felt on December 19, 1940 that Mr. Johnson and Mr. Alberts were holding up the issue of the Zimmerman patent without any justification, did you not?"—

and you answered:

"Answer: Well, these people had already come to me and wanted to settle the Interference on the basis proposed by Mr. Hobbs, and when negotiations after all that time had gone forward and then broken off we felt that it was a scheme for delay because at that time wrenches of the type involved in the Interference were being manufactured by the Precision crowd."

and I then asked you the following question:

1561 "Question: Merely the falling off or breaking of negotiations for settlement would not justify you in saying to Mr. Alberts and Mr. Johnson that they were holding up the issue of the Zimmerman patent without any justification, would it?"—

and you answered:

"Answer: Well, after they had told us Zimmerman was the prior inventor and we hadn't yet received a concession of priority, it certainly would."

You so testified, did you not, in your pretrial deposition?

A. That is correct.

Mr. Freeman: That is all.

The Court: Any redirect?

Mr. Smith: One question.

Redirect Examination by Mr. Smith.

Q. How long did you talk to Mr. Dunbar over the telephone on this occasion when you talked to him on December 9th, 1940?

A. I couldn't say.

1562 Q. Your best estimate?

A. I know that my personal diary shows for that date a telephone conference charge with telephone conversation with Mr. Wacker and Mr. Dunbar of, I think, four or four and a half hours, and I remember very well that I was on the flat of my back and I even had to rig myself up some way to put the telephone to my ear because I got so tired.

Q. Could you give us an estimate of how long you talked with Mr. Dunbar, as distinguished from Mr. Wacker?

A. Well, I would say it was probably an hour's time with Mr. Dunbar. I can't recollect exactly.

Mr. Smith: That is all.

(Witness excused.)

Mr. Smith: Mr. Dunbar.

DAVID O. DUNBAR, called as a witness by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. What is your name and address, Mr. Dunbar?

A. David O. Dunbar, 715 Carlton Avenue, Wheaton, Illinois.

Q. What is your profession?

1563 A. Attorney-at-law.

Q. What is the name of your firm?

A. Dunbar and Rich.

Q. And how long have you been practicing law altogether?

A. Since 1903.

Q. All in Chicago?

A. All in Chicago.

Q. And how long with the firm whose name you have just given us?

A. Since 1929.

Q. Do you recall a telephone conversation with Mr. Raymond E. Fidler of the firm of Davis, Lindsey, Smith and Shonts sometime in December of 1940?

A. I do, sir.

Q. Will you tell us how that conversation came about between you and Mr. Fidler?

A. Mr. Fred G. Wacker, president of Automotive Maintenance Machinery Co., called me on the telephone and asked me to call Mr. Fidler.

Q. Are you general counsel for Mr. Wacker's firm, Automotive Maintenance Machinery?

A. Well, I do a great deal of work for them. I don't know whether I am general counsel or not.

1564 Q. For how long a time have you done a lot of work for Mr. Wacker?

A. Oh, a number of years, ten or twelve years.

Q. In accordance with Mr. Wacker's conversation with you, did you call Mr. Fidler?

A. Yes, sir.

Q. And you can fix the date of that conversation?

A. Well, I assume that Mr. Fidler's statement as to December 7th, 1940 is correct. I know it was on a Satur-

day afternoon. I know it was sometime in December, but I don't know just what the date was.

Q. What was your conversation with Mr. Fidler at that time?

A. Mr. Wacker told me about this patent litigation he was having, and said in a general way that he had developed a tool in his plant. A man named Zimmerman had developed it, and they had a man named Tosema, something like that, assisting, and Tosema had taken advantage—

Q. His name is Thomasma.

A. Thomasma?

Q. Yes.

A. He had taken advantage of confidential in-
1565 formation which he had acquired, and he and another friend of his had started another company, and that they had been selling the tool to a firm in Wisconsin and were now, and they made a tool, a similar tool and sold it to the same firm at a lesser price, and that he had reason—that he would like to know—that Tosema or Thomasma, whatever his name is, had recently admitted it, and he had wanted to know whether he couldn't file a suit for conspiracy against all of them for damages because they were trying to defraud him out of his patent and out of his profits, and he also wanted to know if he had sufficient evidence to prosecute them. He said he would like to put them all in jail if he could.

Q. Who made that statement to you?

A. Mr. Wacker.

Q. What was your telephone conversation with him?

A. He told me to call Mr. Fidler at his home and get the information and advise Mr. Fidler and let him know Monday morning what our conclusion was, and on that basis I called Mr. Fidler.

Q. What was your conversation with Mr. Fidler?

A. Mr. Fidler told me at great length what the situa-
1566 tion was and finally I asked him, "Have you told me everything that has a bearing on it, so far as you know?" And he said he had, and I said, "My opinion is we haven't any legal evidence upon which to base a conspiracy suit; we will get ourselves in lots of trouble, and we certainly do not have legal evidence to start a criminal prosecution." He asked me why, and I told him I didn't think that any prosecutor would open up a

Grand Jury investigation, because there wasn't any sufficient public interest, and he also would be suspicious that we were trying to get him to use the criminal processes to develop evidence for us for our civil suit, and he would naturally go out and ask us to swear out an information, and we would have to base our suit, a criminal prosecution, on the evidence that this fellow Tosema or Thomasma and his relatives had told, and that he had betrayed his employer and was now double crossing his associates, and I wouldn't put any credence in anything that he said and I wouldn't base any prosecution on his testimony, and I certainly didn't want to get the company in a position where it might be sued for false arrest or defamation of character or malicious prosecution or any other charge, and the best thing for him to do in my mind was not to try it, and I was going to tell Mr. Wacker
1567 that Monday morning. That is the last I ever talked to Mr. Fidler about it.

Q. Have you any idea how long you talked to Mr. Fidler on that occasion?

A. No, but it seemed hours to me. I don't know.

Mr. Smith: That is all.

Cross Examination by Mr. Freeman.

Q. You were in the court room yesterday during Mr. Lindsey's cross examination and during the full taking of both the direct and cross examination of Mr. Fidler today, is that correct?

A. I got here about a quarter to twelve yesterday and I heard part of Mr. Lindsey's testimony.

Q. And you are testifying now fully from your memory, you have no documents or any minutes—

A. No.

Q. —of what took place?

A. No, I have no documents.

Q. Had you ever seen the Thomasma affidavit?

A. No, sir.

Q. Were you given information either by Mr. Fidler or Mr. Wacker that the Thomasma affidavit con-
1568 tained statements as to transactions with the Lindberg Company, with the Clark Company and several other companies as leads?

A. Yes, but I think that Mr. Wacker didn't. But I think Mr. Thomasma told me about those things, and also about some former partner of this man Larson. I didn't remember his name until he told it here, and said that he had never heard Larson talk about developing this patent and, therefore, it must not be so. I considered all those things as surmises and conjectures and suspicions which were not legal evidence in the prosecution of a criminal suit.

Q. And had you considered checking up with the Lindberg people, a reputable company here in Chicago, and getting information from that company?

A. I hadn't the slightest doubt in my mind but what this Tosema or Thomasma was telling the truth, but to prove that legally would be a different thing, and you would be checking on the truth of what he said, but it wouldn't be evidence to my mind sufficient to prosecute a third party.

Q. That is, you couldn't get a prosecutor to step in because there wouldn't be sufficient public inter-
1569 est—

A. He would ask us to swear out an information, a warrant, for these people, and we would have an arrest and they would be discharged because we couldn't support our information or warrant, and then we would be subject to suit for false arrest or defamation of character or malicious prosecution or anything else.

Q. I understood you to say there wasn't any question in your own mind but what Thomasma's story was correct.

A. I assumed that he was telling the truth, but there wasn't any legal evidence to support it outside of his own statement.

Mr. Freeman: That is all.

Mr. Smith: That is all.

(Witness excused.)

Mr. Smith: If your Honor please, at this time we would like to offer as Plaintiff's Exhibit 62 the pre-trial deposition of Walter Carlsen, which was taken by the Plaintiff on Tuesday, April 13th, in Chicago, Illinois.

(Which said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT No. 62.)

Mr. Smith: I would like to point out to your
1570 Honor that the deposition bears a supplementary certificate by the notary that Mr. Carlsen refused to sign the affidavit on the grounds it might incriminate him.

As Plaintiff's Exhibit No. 63 we would like to offer the stenographic transcript of proceedings and testimony of Kenneth R. Larson, which were taken before your Honor as a pre-trial deposition.

(Said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT No. 63.)

Mr. Smith: I would like to state for the purpose of the record it is our intention to file all pre-trial depositions that were taken and which have not been introduced as part of our case.

At this time I would like further to move the reinstatement or your Honor's permission to have Mr. Fidler and Mr. Harry Lindsey resume as attorneys in the case, they both having completed their testimony in the case.

The Court: The motion will be granted.

Mr. Lindsey: May the Court please, there is some of this Interference testimony that has not yet been offered, and there are some exhibits. I just spoke to
1571 Mr. Ooms about it, and we will enter into a stipulation, if that is agreeable, rather than take your Honor's time in offering them.

The Court: All right.

Mr. Lindsey: And the stipulation will be offered as an exhibit in evidence.

The Court: That will be all right.

Mr. Ooms: May we have one more thing? There have been a large number of documentary exhibits offered here and some referred to without offering, some were numbered possibly and referred to by number. My request is that such exhibits as have been used and referred to here that are not already offered, may be offered at the conclusion of this case rather than try to check them at this moment.

Mr. Lindsey: No objection.

Mr. Ooms: I think Mr. Hibben and I can get together and check all the exhibits.

Mr. Lindsey: I would suggest wherever we can to

substitute originals for carbons and make the record as complete as possible, and we can work that out without bothering your Honor.

Plaintiff rests, your Honor.

1572 Whereupon the Plaintiff rested its case in chief.

Mr. Freeman: No rebuttal on the part of the Defendants.

But I would like to say for the record that Mr. Joe Johnson of Snap-On, who has not been here all this week although he was here all of last week, was taken to the hospital last Sunday and is still in the hospital at Kenosha, Wisconsin. That is just to explain his absence.

The Defendants rest.

The Court: Let me ask you gentlemen a couple of questions. This Larson application, which was Number 232,723, did that finally ripen into a patent?

Mr. Ooms: Yes.

Mr. Fidler: Yes.

The Court: That was the one involved in the Interference?

Mr. Fidler: That is correct.

The Court: Was that application supported by this drawing that you have referred to as Exhibit 27?

Mr. Fidler: The testimony taken in the Interference was testimony directed to that drawing, supporting the dates of invention with respect to the subject matter, the drawing and structure shown in that patent.

1573 The Court: Then finally a patent was allowed?

Mr. Fidler: That is right.

The Court: And based upon that drawing?

Mr. Fidler: That is right.

The Court: When do you folks want to argue this?

Mr. Fidler: I may say, your Honor, that the patent claims are limited to a detail of feature shown in those drawings, but not to the subject matter broadly. The broad claims directed to that type of wrench went to the party Zimmerman in the Interference.

The Court: There was some kind of a sketch filed with the original application, or drawing?

Mr. Fidler: Well, we filed regular patent application drawings with that.

The Court: Was this attached to them?

Mr. Fidler: No. The drawing itself is not attached. It was merely evidence of that submitted in connection with the Interference.

The Court: Did it support one of the claims finally allowed?

Mr. Fidler: Not allowed in that case, no. Those claims that it supported went to the party Zimmerman. It would support, I believe, the detail claims on the so-called
1574 Larson feature, the spring-tail feature or the tail feature which did finally issue in that patent.

The Court: Well, it would support the Larson application from the standpoint of date, wouldn't it, whether it supported it from the standpoint of the mechanical drawing or not?

Mr. Fidler: Yes, that is correct, your Honor.

The Court: Isn't that correct?

Mr. Ooms: That is correct, your Honor.

The Court: Isn't that one of the points in dispute here?

Mr. Ooms: Yes.

The Court: As to when that drawing was made and by whom it was made?

Mr. Ooms: Yes, your Honor.

Mr. Fidler: That is correct.

The Court: When do you want to argue the case?

(Here followed discussion off the record.)

1575 The Court: You can argue it tomorrow afternoon. Suppose you folks get in here at three o'clock tomorrow afternoon and we will stay here. You may not be heard then, but we will stay until you finish.

(Whereupon an adjournment was taken until the following day, Friday, May 21, 1943, at the hour of 3:00 o'clock P.m.).

1577 PLAINTIFF'S EXHIBIT NO. 3.

Agreement.

This agreement made and entered into this 20 day of December, 1940 by and between Snap-On Tools Corporation, of Kenosha, Wisconsin, a Delaware corporation (hereinafter for brevity referred to as Snap-On), and Kenneth R. Larson, of Desplaines, Illinois, and the Precision Instrument Manufacturing Co., Inc., an Illinois Corporation (hereinafter for brevity collectively referred to as Precision), Witnesseth That:

Whereas, Snap-On is the holder of equitable title under application for letters patent Serial No. 232,723, filed October 1, 1938 for a Torque Wrench structure pursuant to an agreement executed between the parties on September 28, 1938; and

Whereas, said application for letters patent has become involved in Patent Office Interference No. 77,565 with the applications of Herman W. Zimmerman Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench; and

Whereas, Precision is desirous of settling said interference by a concession of priority from said Kenneth R. Larson to said Herman W. Zimmerman in order that said interference may be terminated without further contestation and expense; and

Whereas, Snap-On is willing to cooperate with Precision to the extent of re-assigning whatever title it now possesses in and to patent application Serial Number 232,723 and filed October 1, 1938 so that Precision may settle said interference with Automotive Maintenance Machinery Co. (hereinafter for brevity referred to as Ammco) who is the assignee of the entire right, title and interest in and to the Zimmerman patent applications Serial No. 175,883, filed November 22, 1937 and Serial No. 210,869, filed May 31, 1938; and

1578 Whereas, Precision requires Snap-On's acquiescence in the cancellation of said agreement dated September 29, 1938 to enable compliance with the agreements entered into between Snap-On and Ammco, on one hand, and Ammco and Precision, on the other hand;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Snap-On shall and hereby does re-assign whatever right, title and interest it now possesses in and to the Larson patent application Serial No. 232,723 to said Kenneth R. Larson and Precision Instrument Manufacturing Co., Inc., and it is agreed that this assignment shall be limited to said structure disclosed and described therein and shall not include any improvements thereon. Pursuant to the terms hereof Snap-On will simultaneously execute the attached form of assignment marked Exhibit 1, and Precision agrees that any transfer of the aforesaid patent application Serial No. 232,723 by it shall be executed only on the attached form of assignment marked Exhibit 2.

2. Precision agrees to manufacture and deliver to Snap-On torque wrenches now on order up to the time of signing this agreement, and said wrenches shall be delivered to Snap-On in accordance with and at the prices that prevailed under the agreement dated September 28, 1938. Should the number of torque wrenches now on order from Snap-On to Precision exceed six thousand (6,000) wrenches, then the royalty of ten (10%) per cent required to be paid to Ammco on all wrenches in excess of six thousand (6,000) pursuant to the terms of the agreement entered into between Ammco and Snap-On, shall be deducted from the sums due Precision for the wrenches delivered in accordance with the terms contained herein.

3. Simultaneous with the execution of this agreement, Snap-On shall advance to Precision the sum of Five Hundred ($500.00) Dollars so that this amount can be paid by Precision to Ammco, and said advance shall be deducted from funds now held by Snap-On under the agreement dated September 28, 1938.

4. Kenneth R. Larson and Precision warrant that the second Larson patent application Serial No. 317,226 and filed February 5, 1940, illustrates structural subject matter that in part was the concept of George M. Walraven, an engineer in the employ of Snap-On Tool Corporation, and agree that they will sign the necessary documents, without the payment of any further consideration

to enable Snap-On to file a joint application in the name of Kenneth R. Larson and George M. Walraven showing the identical subject matter of the Larson patent application serial number 317,226 and claiming individually and in combination the spring tail beam extension and the improved dial mechanism features. It is further agreed and understood that upon the filing of a joint application Precision will assent to the abandonment of the Larson application Serial No. 317,226 in lieu of the aforesaid substitute joint application, and said joint application shall remain the property of Snap-On. Snap-On agrees to grant unto Precision a free, non-assignable and non-exclusive license under the aforesaid joint application and any patent that may eventuate therefrom; provided, however, that Precision shall not utilize any of the teachings comprising the subject matter of application Serial No. 317,226 and or the aforesaid joint patent application in any transaction that directly or indirectly involves Ammco or its officers in any manner whatsoever.

5. Precision assents to the agreement between Snap-On and Ammco; and Snap-On assents to the agreement between Precision and Ammco subject to the full compliance of the aforesaid agreements and the terms contained herein, and thereupon Snap-On agrees to acquiesce in the cancellation of the agreement between it and Precision dated September 28, 1938, and shall thereupon refund to Precision any and all funds in its possession belonging to Precision pursuant to the terms of the aforesaid agreement dated September 28, 1938 less all necessary and legitimate expenses which have theretofore properly accrued as against said fund including the five hundred ($500.00) dollar payment advanced herein and any royalties due Ammco.

Precision warrants that the aforesaid agreement dated September 28, 1938 did not include or cover any improvements on the Larson application Serial No. 232,723 and that such improvements that were assigned to Snap-On thereon was for considerations and pursuant to rights other than contained in the agreement dated September 28, 1938.

In Witness Whereof, the parties hereto have caused this agreement to be signed in duplicate by their officers, re-

spectively, thereunto duly authorized and their corporate seals affixed this 23rd day of December, 1940.

Snap-On Tools Corporation
By J. Johnson
President

(Corporate Seal)

Attest:
Wm. A. Seidemann
Secretary

Kenneth R. Larson
Kenneth R. Larson
Precision Instrument Mfg. Co., Inc.
By Kenneth R. Larson
President

(Corporate Seal)

Attest:
Walter Carlsen

1581 State of Illinois }
County of Cook } ss.

On this 24 day of December, 1940, personally appeared before me Kenneth R. Larson, to me personally known, who being by me duly sworn, deposed and said that he is the President of Precision Instrument Mfg. Co., Inc., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

M. K. Hebbs
Notary Public

(Notary Seal)

State of Wisconsin }
County of Kenosha } ss.

On this 23rd day of December, 1940, personally appeared before me Joseph Johnson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Snap-On Tools Corporation, a corporation of Wisconsin, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed

of said corporation and that the seal affixed thereto is its lawful corporate seal.

Marguerite Ninalar
Notary Public.

(Notary Seal)

My commission expires November 30, 1941.

1582 EXHIBIT 1.

Assignment.

Whereas, Snap-On Tools Corporation, of Kenosha, Wisconsin, is the owner of the following patent application Torque Wrench—Serial No. 232,723 Filed October 1, 1938 under a certain agreement dated September 28, 1938 with Kenneth R. Larson and Precision Instrument Mfg. Co., Inc., of Desplaines, Illinois; and

Whereas, the aforesaid patent application is involved in Interference No. 77,565 in the United States Patent Office and pursuant to certain settlement agreements it is desired to amicably settle controversies between all parties and pursuant thereto certain reciprocal covenants have been entered into between all of the parties with full knowledge of their respective requirements thereunder; and

Whereas, Snap-On Tools Corporation has agreed to reassign the aforesaid patent application to the Precision Instrument Mfg. Co., Inc.; and Kenneth R. Larson;

Now, Therefore, to all whom it may concern, be it known that for and in consideration of One Dollar ($1.00) to us in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, we, the said Snap-On Tools Corporation, have sold, assigned, transferred and set over, and by these presents do assign, transfer and set over, unto said Kenneth R. Larson and Precision Instrument Mfg. Co., Inc., their heirs, successors and assigns, the entire right, title and interest in and to said invention and all foreign rights to said invention, and any letters patent which may be granted therefor or thereupon.

In Witness Whereof, we have hereunto set our hands and fixed our seals this 23rd day of December, 1940.

Snap-On Tools Corporation
By J. Johnson
President.

(Corporate Seal)

Subscribed and sworn to before me, a Notary Public, this 23rd day of December, 1940.

Marguerite Ninalar
(Notary Seal) *Notary Public.*

My commission expires November 30, 1941.

1583 PLAINTIFF'S EXHIBIT NO. 4.

(Letterhead of Snap-On-Tools—Kenosha, Wis.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

October 26, 1938.

Mr. Kenneth R. Larson,
Des Plaines, Illinois.

Dear Mr. Larson:

We are pleased to let you know that the Tension Wrench you have developed as per sample submitted has been approved in mechanical principle by our Engineering Department, and that we are prepared to utilize you or your company as our source of supply on Tension Measuring Wrenches, marketing such wrenches through our entire sales organization embracing 34 branches and over 500 salesmen.

Immediately upon definite advice from you that you have completed all necessary financial arrangements for production we will place with you an initial stock order for 500 Tension Wrenches in the 150-foot-pound size, to be delivered to us as the wrenches are finished in lots of 15 or more per day. Deliveries against the order to start during the first week in January, 1939. Subsequent orders will be placed with you for quantities required to meet the demand. It is understood that you will furnish the tools to us complete, but without metal packing box, at $4.88 net each. Terms: 2% ten days, 30 days net; F. O. B. Des Plaines, Illinois.

It is further understood that the wrenches will be furnished to us under production conditions conforming with the Federal Wage and Hour Act and all other terms and conditions as set forth in the agreement which has been executed between us.

In addition to the size wrench specified on our initial

order, we shall depend upon you as our source of supply for several other sizes in Tension Wrenches and, barring unforeseen construction deficiencies, we anticipate development of a substantial volume of business on this line.

Yours very truly,

Snap-On Tools Corporation,

E. W. Myers,

President.

EWM:HB

1584 PLAINTIFF'S EXHIBIT NO. 7.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

cc. Mr. Harry C. Alberts
First National Bank Building
Chicago, Illinois

Registered Mail
November 11, 1940
Precision Instrument Co.
Des Plaines, Illinois

Gentlemen:

It has come to our attention that you are involved in some difficulties with a stockholder that may have a bearing on the outcome of the present interference between your patent application and the Zimmerman patent application owned by the Automotive Maintenance Machinery Co. Under these circumstances we hereby notify you that we shall henceforth retain from all accounts due you the sums set forth in the contract for credit to the reserve account. For some time we have waived this requirement in part, but the present circumstances change the situation entirely and cannot continue unless we have an adequate and much larger reserve than at present on hand.

Further, we may find it desirable to engage in the manufacture of a different torque wrench to fulfill prospective volume business that we can only participate in with a wrench that is not involved in any patent difficulties. Under our contract with your firm, if the patent is not granted within two years, we may undertake the manufacture of your present wrench, which we are not considering, but

at any time we are entitled to engage in the manufacture of a different wrench.

Yours very truly,

Snap-On Tools Corporation,
Assistant Secretary.

WWDaniel:EL

1585 PLAINTIFF'S EXHIBIT NO. 8.

(Letterhead of Harry C. Alberts—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

October 18, 1938.

Snap-On Tools Corporation
Kenosha, Wisconsin.

Atten: Mr. Joseph Johnson, Vice President.

Re: Torque Wrench—File 11354—Kenneth R. Larson

Dear Joe:

I am enclosing herewith carbon copy of an affidavit signed by Mr. Larson this afternoon in connection with the above entitled matter. I am retaining the original in my files for safekeeping. I understand that Mr. Larson will confer with you tomorrow morning and I want you to have this affidavit so that you may know your position in the matter.

Whatever is concluded as to financial arrangements, should not and does not alter the terms of the preliminary agreement which already has been subscribed to by Mr. Larson. There is a provision in the agreement that in the event Mr. Larson cannot proceed and his efforts to procure proper finances are futile, then you have the right to proceed to get these devices and pay him a 5% royalty as prescribed in said preliminary contract.

I think the affidavit is clear and goes as far as you possibly can insure yourself against any involvement. If you have any further questions or desire more information regarding the matter, please do not hesitate to write or call me.

With kindest personal regards, I remain

Yours very truly,

Harry C. Alberts.

HCA:EM.

1586 PLAINTIFF'S EXHIBIT NO. 8-A.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

United States Patent Office.

Kenneth R. Larson
Serial No. 232723
Filed October 1, 1938
Torque Wrench } Division 29.

Affidavit of Kenneth R. Larson.

State of Illinois
County of Cook } ss.

Before me, the undersigned authority, duly commissioned in and for the County and state aforesaid, personally appeared before me, Kenneth R. Larson, who after being duly sworn doeth depose and say:

Affiant avers and states the fact to be that he alone conceived the structure set forth in my application serial number 232723 and filed October 1, 1938 in the United States Patent Office; that no other individual directly or indirectly contributed any concept or feature of said structure; that the only other individual involved in the reduction to practice of said structure is Jack E. Kamppenin who is my partner in the business operated under the name and style of K and L Motor Rebuilders, Desplaines, Illinois; that whatever was contributed by said Jack E. Kamppenin was at the special instance and direction of affiant who alone conceived the structure and merely procured the assistance of said Jack E. Kamppenin in the production of certain parts as a mechanic working under the direction and supervision of affiant.

Affiant further avers and warrants that there are no other individuals involved in any manner or degree with
the conception or development or structure set forth
1587 and described in the above entitled patent application; that should Snap-On Tools Corporation enter into the submitted contract already executed by affiant, affiant warrants that he will not directly or indirectly become involved with any individual, firm or corporation without the written consent of Snap-On Tools Corporation;

that he will not directly or indirectly become involved with any individual, firm or corporation to contribute to affiant's concept, structure or directly or indirectly participate in the business of furnishing the aforesaid wrenches to Snap-On Tools Corporation in the event such individual, firm or corporation is or was connected or involved in the tool or allied business or who could be even remotely construed as a competitor of or possess interests adverse to Snap-On Tools Corporation; and that this restriction not only extends to individuals, firms or corporations, but also to any of their employees or ex-employees.

Affiant makes this warranty and agrees to abide therewith upon the strength of Snap-On Tools Corporation entering into the submitted contract already executed by affiant and any final contract that may eventuate therefrom; and that this warranty and the restrictions herein stated shall constitute material and essential conditions of the contractual relationship to be entered into between affiant and Snap-On Tools Corporation.

Kenneth R. Larson.

Subscribed and sworn to before me, a Notary Public, this 18th day of October, 1938.

Esther Meltzer.

1588 PLAINTIFF'S EXHIBIT NO. 10.

(Letterhead of Harry C. Albert—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 19, 1940.

Snap-On Tools Corporation
Kenosha, Wisconsin.

Attention: Mr. Joseph Johnson, President.

Re: Larson vs. Zimmerman
Interference No. 77,565
File 11484

Dear Joe:

I am enclosing herewith copy of a letter received from the attorneys for Ammco and my reply thereto. I trust that you consider my reply as a warranted statement to

make before receiving your approval in that time is of the essence and I wanted Mr. Lindsey to know that he is not clubbing anyone into submission.

I consider his letter as another example of the type of "blackmail" which Thomasma no doubt is confronted with and it happened to work successfully once so that they expect to do the same with Larson, Snap-On Tools Corporation and myself personally. I do not weaken under such conditions and, in fact, I feel that the situation requires strength rather than weakness.

I would like for you to submit to your general counsel the entire matter insofar as it relates to a possible suit for conspiracy with Larson to defraud Ammco. You can tell your general counsel all that you know about the matter and that is precisely what I know. I have no more facts than you have at the present time. I would like to get the benefit of an impartial viewpoint from a legal mind who is not directly involved in this controversy for the moment.

Please bear in mind that at the conference with Messrs. Fidler and Wacker, it was admitted by Fidler that the disclosure and dealings of Ammco with your firm was not in confidence. In other words there was no relationship of confidence between Ammco and Snap-On Tools Corporation at any time.

Mr. Hobbs served notice on me that he is not going to continue any further in behalf of Larson because of the failure of settlement negotiations. I do not like his decision in the matter after receiving a retainer of $25000 from Precision, but I must accept that. I stand on record in the Patent Office as attorney for Larson as well as your firm. I cannot very well at this moment withdraw and leave Larson to the unmerciful tactics of Ammco and their attorneys. I must give Larson an opportunity to select another attorney and this time I am not going to make any suggestions.

1589 Larson was in today and vehemently asked me to keep on as attorney of record for him as well as Snap-On Tools Corporation. I would not like to do this except for the fact that my withdrawal would give more power to Ammco and their attorney to kill the desire of Larson to proceed. My effort all along has been to stiffen Larson's position so that he would not leave Snap-On

Tools Corporation holding the bag—contract or no contract.

Your general counsel would be in a better position to decide whether or not this would incriminate your position by having me proceed in behalf of Larson. I have been so close to the situation and settlement negotiations in the last week that I would not want to depend upon my own judgment in the matter. My judgment tells me to withdraw in behalf of Larson as soon as he can appoint another attorney and the challenge received from Mr. Lindsey as per their enclosed copy of their letter, makes me boil to think that my judgment should do the thing they want me to do, namely, withdraw.

For the present, do not release any papers, letters or other expressions directly to Larson or Precision Instrument Mfg. Co. or anyone else without these being conveyed through the writer. Carry on your commercial transactions as in the past in strict accordance with the contract. Build up your reserve and let me know your general counsel's viewpoint in the entire matter.

The reference on page 4, second paragraph, of my letter as to the responsibility of Lindsey on matters that have come to my attention, has reference to a statement made by Larson that the investigator at Desplaines approached these witnesses with the introduction that he was a Patent Office investigator. This is impersonation of a federal officer and most likely was at the suggestion of the attorney for whom they were working if this can actually be proved. Mr. Larson states that this impersonation took place when the investigator interviewed his ex-partner in the auto parts jobbing business. I cannot vouch for the accuracy of this statement.

With kindest regards, I remain

Yours very truly,

Harry C. Alberts.

HCA:EM

P. S. Advise Mr. Daniel about not releasing any papers, letters or other expressions directly to Larson or Precision without first being conveyed to me.

H. C. A.

1590 PLAINTIFF'S EXHIBIT NO. 13.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Re: Larson vs. Zimmerman—Settlement Matter
File 11580

December 18, 1940.

Conference held November 28, 1940 at office of Davis, Lindsey, Smith and Shonts with Messrs. Fidler, Wacker, Allen, and Tomasma, on one hand, and Messrs. Johnson and Alberts, on the other hand. This conference was scheduled at 10:30 A. M. and the first hour involved a discussion as to whether or not Johnson would admit Precision was Snap-On and Snap-On was Precision. Unless this was understood Fidler and Wacker said they would not divulge any information concerning the alleged perjury of Larson and witnesses in his behalf. We refused to consider this as an understanding and nevertheless Fidler proceeded after a discussion about an hour to call in Thomasma and interrogate him in a more or less formal manner. Thomasma went through all the facts of his former employment by Ammco and his development of a torque wrench with Larson on a sparetime basis.

The highlights of his story is that Exhibit No. 27 was drawn by Thomasma on a Sunday afternoon and he can prove this by his brother and sister-in-law who saw him working on this drawing. Thomasma's brother is a representative of some cork block firm whose offices are above those of Mr. Fidler in the McCormick Building. (Larson testified some high school boy made the drawing for him.)

Thomasma further stated that this drawing was made by him during the early part of 1938 (Exhibit 27 has a date of 1936 thereon). Thomasma also stated that his wife knew of Carlson through patronizing his wife's beauty parlor and suggested that he be contacted for the purpose of financing this venture. Thomasma supposedly brought Carlson to Larson's basement sometime in 1938 and from all indications they met there for the first time (Carlson and Larson testified that they met in some Evanston Auto Parts store where Larson was employed in 1934 when he purchased several head gaskets two different times for his old Packard Car).

Thomasma admitted that Larson did most of the work on the wrench and that Larson contributed to some extent to the improvement which he considered to be different from and not in conflict with anything Ammco had designed or purchased up to that time. A loan was supposed to have been made from a bank to purchase an old lathe and Thomasma and Larson signed for this loan and jointly bought the lathe. This was some time in 1937.

After hearing this formal testimony which was not under oath, but a demonstration of what Thomasma would testify to, Albert stated openly at the conference that he was withdrawing as attorney for Larson in that he was brought into the case through Snap-On and would therefore continue to represent Snap-On in view of the fact that there apparently were charges and counter-charges to be made in this case and a conflict of interests might develop 1591 between Snap-On and Larson so that it would be best for Alberts to withdraw.

From then on, M. K. Hobbs, Esq. negotiated in behalf of Larson with Mr. Fidler in behalf of Ammco. On Thursday December 12, 1940, Hobbs called Alberts and advised that Lindsey was going to confer with him at his own office on Friday Morning, December 15th and asked whether I cared to be present. I said I would and the next morning Mr. Hobbs, Mr. Lindsey, Fidler and myself conferred.

They presented a tentative draft of an agreement which involved Ammco, Snap-On Precision and Larson as parties. Up to the time of submission of this agreement, the question was always put to me as to whether or not we would permit Larson to concede priority of the Zimmerman counts in interference. In the agreement I was advised at this conference for the first time that they not only expected a concession of priority, but also Larson's first and second applications.

In view thereof, I wired Mr. Johnson who was then in Canada to stop over and see me. I then conferred with Mr. Johnson and his associates at Snap-On Tools at Kenosha on Tuesday, December 17, 1940. Mr. Larson was present at that conference in Kenosha. As a result of our conference, the letter of December 17, 1940 was written to Mr. Fidler.

Harry C. Alberts.

1592 PLAINTIFF'S EXHIBIT NO. 16.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. Thomas Rafferty
1101—10 North Clark Street
Chicago, Illinois

December 26, 1940.

Dear Mr. Rafferty:

Re: Larson *v.* Zimmerman
Interference No. 77,565

The parties involved in the above interference have agreed to settle the same without further contest. It will not, therefore, be necessary for you to appear and testify in this matter in response to the subpoena previously served upon you.

The subpoena served upon you required you to produce

"1. Each and every notebook or other means employed by said Thomas Rafferty in taking down stenographically and reporting testimony given orally on behalf of the party Larson in the above-entitled interference by the following witnesses before Esther Meltzer, a Notary Public, at the offices of Harry C. Alberts, 38 S. Dearborn Street, Chicago, Illinois, beginning on October 24, 1940 and ending on November 4, 1940:

Kenneth R. Larson	Henry C. Schultz
Walter A. Carlson	William Ladendorf
C. C. Whittaker	Harold Blake
L. Hynes	R. C. Ford
Richard Barrgren	

"2. The original copy of such testimony stenographically taken down by said Thomas Rafferty in said notebooks above referred to, and which said Thomas Rafferty has completed by 9:30 A. M. Monday, December 23, 1940."

In terminating this matter, it was agreed that you would deliver up the foregoing material, as well as all copies of the transscript of such testimony now in your possession, to Mr. Alberts. We would appreciate it if your would attend to this immediately.

Very truly yours,

F:J

CC: Mr. Harry C. Alberts
Mr. M. K. Hobbs
Mr. Fred G. Wacker

1594 PLAINTIFF'S EXHIBIT NO. 18.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement made this 16th day of January, 1941 by and between Precision Instrument Manufacturing Company, a corporation organized under and existing by virtue of the laws of the State of Illinois, and having its principal office and place of business at Desplaines, Illinois, (hereinafter for brevity referred to as Precision), and "Snap-On Tools Corporation, a corporation organized and existing by virtue of the laws of the State of Delaware and having its principal office and place of business at Kenosha, Wisconsin, (hereinafter for brevity referred to as Snap-On); Witnesseth That:

Whereas, the parties are now operating under an agreement dated September 28, 1938 between Kenneth R. Larson and Snap-On Tools Corporation; said agreement having been assigned by Kenneth R. Larson to Precision; and

Whereas, under the terms of said agreement, Kenneth R. Larson and Precision were required to assign patent application serial number 232,723 and filed October 1, 1938 to Snap-On as security for the performance thereof; and

Whereas, it became necessary under patent interference No. 77,565 in the United States Patent Office entitled Kenneth R. Larson vs. Herman W. Zimmerman for Larson to concede priority of invention to Zimmerman; and

Whereas, under the terms of said concession of priority, it was necessary for Precision and Snap-On to respectively enter into agreements with the Automotive Maintenance Machinery Co. under date of December 20, 1940 whereby only 6,000 additional wrenches of the type shown and described in application serial number 232,723 and filed October 1, 1938 are to be henceforth manufactured; and

1595 Whereas, Snap-On is willing to cooperate with Precision to modify the agreement dated September 28, 1938 and to arrange for continuation of the relationship between the parties in connection with another type of torque wrench which may be permissible in the light of the separate agreements entered into by the parties to this agreement and Automotive Maintenance Machinery Co.; and

Whereas, the parties hereto entered into an agreement dated December 20, 1940 that enabled Precision to settle interference No. 77,565 with Automotive Maintenance Machinery Co.

Now, Therefore, for and in consideration of the sum of One ($1.00) Dollar by each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged and confessed, and other good and valuable considerations, including the mutual covenants, agreements, and promises hereinafter contained by the respective parties hereto to be faithfully performed, the parties hereto hereby agree as follows:

1. The parties hereby affirm the agreement entered into on December 20, 1940 to provide for the settlement of interference No. 77,565. Precision further agrees to the forfeiture of patent application serial number 317,226 and filed February 5, 1940 in the name of Kenneth R. Larson and hereby agrees to have Kenneth R. Larson assign to Snap-On a substitute application covering the same subject matter filed jointly in the name of Kenneth R. Larson and George M. Walraven, the said application being identified by serial number 374,362 and filed January 14, 1941. Title to the aforesaid identified joint application to remain in Snap-On and Kenneth R. Larson hereby acknowledges and warrants that the subject-matter described and claimed therein or intended to be described and claimed therein, was the joint conception of Kenneth R. Larson and George M. Walraven.

1596 2. Precision agrees to exclusively furnish Snap-On with at least 6,000 Torque Wrenches of the present design of the type set forth in patent applications serial numbers 232,723 and 317,226 filed October 1, 1938 and February 5, 1940, respectively, and to make reasonably prompt deliveries thereon to meet the requirements of contracts now held by Snap-On with the government and others at the following prevailing prices:

Snap-On Tools Catalog No.	Capacity
R-20	20 ft. lbs.
R-50	50 ft. lbs.
R-120	120 ft. lbs.
R-302	300 ft. lbs.
TQ-12	12½ ft. lbs.
TQ-12½	12½ ft. lbs.
TQ-15	150 ft. lbs.
TQ-50	150 ft. lbs.
TQ-51	50 ft. lbs.
TQ-80	80 ft. lbs.
TQ-81	80 ft. lbs.
TQ-352	350 ft. lbs.
602	600 ft. lbs.
1003	1000 ft. lbs.
1503	1500 ft. lbs.
3003	3000 ft. lbs.

The aforesaid wrenches which are equipped with ratchets, are priced on the basis of ratchets being furnished by Snap-On to Precision who assembles these ratchets into wrench, packs wrenches in any metal boxes furnished to it, and packes these for shipment F. O. B. Des Plaines. Special wrenches shall be furnished upon price estimates mutually established therefor and where quantities shall warrant, the aforesaid prices shall be adjusted to correspond proportionately with the presently established standard size and quantity wrench TQ15, all other sizes having been heretofore purchased in comparatively small quantities.

3. Precision hereby agrees to assign to Snap-On application serial number 374,361 filed January 14, 1941 which shall be held as security for the performance of this contract under which Snap-On shall at all times
1597 retain an exclusive license to sell the submitted torque wrench under said patent application and any patent that may eventuate therefrom. After Precision has delivered 6000 wrenches of the present design to Snap-On at the aforesaid prices and in accordance with the terms of this agreement, then Precision agrees to exclusively furnish to Snap-On torque wrenches of the design or type described and claimed or intended to be described and

claimed in application serial number 374,361 filed January 14, 1941 at prices set forth in clause 2 hereof so long as economic and market conditions prevailing at the time of the execution of this agreement shall persist or endure. Precision warrants that the torque wrenches supplied under the aforesaid application shall at least be as satisfactory from an appearance, weight and accuracy standpoint, as the wrenches heretofore supplied under contract dated September 28, 1938.

4. Should economic conditions change so as to warrant an increase or decrease in the aforesaid prices, then the parties shall have the right to make a cost study or analysis of raw materials, labor and sales expense on the basis of present conditions. Such analysis shall involve the right by Snap-On upon request at all reasonable business hours to examine the books, records, purchases, inventories and corporate records of Precision, and present market prices and conditions shall be the basis for determining the right to an increase or decrease at the request of either party. Should these records show that a price increase or decrease is justified on the basis of present prevailing prices of raw material, labor and sales expense, then a corresponding adjustment is to be made up or down determined upon present market conditions as a basis of the new price. Any new price arrived at upon the foregoing basis, shall be placed in effect after then existing sales contracts possessed by Snap-On shall have been fulfilled and in no case shall the new price become effective in less than sixty days from the date of such determination to be subscribed to by both parties.

1598 5. Precision hereby agrees to save Snap-On harmless from any expense, damages or profits occasioned by virtue of a charge of infringement predicated upon its sale of wrenches purchased from Precision of the type described and claimed or intended to be described and claimed in application serial number 374,361 or any improvements thereon. In the event Snap-On is charged with patent infringement or suit is instituted against it by virtue of its sale of wrenches purchased from Precision in accordance with the terms contained herein, then Precision agrees to sustain the expense occasioned to Snap-On by virtue of its defense of any litigation.

6. Precision hereby agrees that Snap-On may withhold one-fourth of the purchase price from each order as a

defensive patent litigation fund or reserve to be used by Snap-On in its own defense should it be named a defendant in any suit predicated upon the sale of the aforesaid wrenches purchased from Precision. When this defensive fund amounts to $2,000.00, then Snap-On is to withhold one-eighth of the purchase price from each successive order until a fund of $5,000.00 is accumulated. This defensive fund is to be held in trust by Snap-On and interest shall accrue thereon at the savings account bank rates in force in the City of Kenosha, State of Wisconsin. Should no suit be instituted for patent infringement against Snap-On by virtue of the sales of wrenches supplied by Precision within three years of the date of the first shipment of wrenches of the type set forth in application serial number 374,361, then this litigation fund is to be returned to Precision with whatever interest has accumulated therein at the saving account bank rates in force in the city of Kenosha, State of Wisconsin.

1599 7. If after the issuance of a patent on the aforesaid application, Serial No. 374,361, the same shall be infringed by any third parties and Precision, after demand by Snap-On that suit be instituted against such infringer or infringers, shall fail or refuse to institute and prosecute suit against such infringer, Snap-On at its option, may terminate this agreement or, at its option, may suspend purchases under this agreement and/or itself may institute and prosecute suit against such infringer, such suit to be brought in the name of Precision if Snap-On sees fit. The expense of offensive and/or defensive litigation to be paid by Precision and Snap-On shall have the right to utilize all or any necessary part of the Precision reserve fund held by it for this purpose.

8. Precision agrees to replace any and all wrenches that are defective or that become defective in use by the customers of Snap-On, and Precision unconditionally guarantees these wrenches and shall provide the same adjustment or service under the same terms and conditions prescribed by Snap-On to its customers as each individual complaint may deem necessary or proper within the discretions of Snap-On. It is further understood and agreed that should there be any disputes between the parties as to the replacement or repairs, then the decision of Snap-On shall be final inasmuch as it must satisfy the customer in any event and it is understood that customer satisfac-

tion is important to the successful merchandising of the aforesaid device. The unconditional guarantee given by Snap-On to its customers shall be computed from the time the aforesaid wrenches are actually sold by Snap-On's branches to the customer rather than the date of delivery from Precision to Snap-On or from Snap-On to its branches.

1600 9. It is further understood and agreed that the aforesaid prices do not include ratchets that may be desired on some of the wrenches and Snap-On agrees to furnish Precision such ratchets as it desires to be incorporated on each torque wrench of the type comprising the subject matter of this agreement. The aforesaid prices include packing and delivery to Snap-On and placement of the wrenches in special containers whenever such are supplied by Snap-On. Otherwise, the usual shipping carton shall be supplied by Precision.

10. Should Precision fail to maintain an adequate supply of the submitted type of torque wrenches for Snap-On at the prescribed prices or Precision discontinues to manufacture these torque wrenches or fails to meet the workmanship and material guarantees or reasonably prompt shipments, then Snap-On may take up the manufacture of these wrenches to supply their requirements at any time that the supply is not available to them at the specified prices or Precision discontinues the manufacture of these wrenches or fails to maintain competitive prices to Snap-On that should be no more than the average of the three lowest written bids received by Snap-On from other firms for the manufacture and supply of these wrenches. Evidence of three written bids from competitive firms shall be sufficient to require Precision to reduce the prices to Snap-On to correspond with the average of the three lowest bids for manufacturing the aforesaid wrenches according to specifications prescribed by Snap-On to Precision. The price on the basis of an average of three lowest bids shall be enforced only in the event of a disagreement under the price change provisions of clause 4 hereof.

11. Precision agrees to actively prosecute the pending patent application serial number 374,361 and any and all improvements thereon at its own expense and
1601 through counsel selected by Snap-On. All improvements shall become the subject matter of this agree-

ment under the same terms and conditions without the payment of any further consideration or requirement to be specifically recited herein.

12. Any and all disputes arising under this agreement shall be submitted, at the option of either party, to three arbitrators who shall have the power to decide whether or not suit shall be brought as well as any other disputes. Upon such contingency, each party shall designate one (1) arbitrator, and these two (2) shall appoint a third arbitrator. In case either party shall fail for a period of fourteen (14) days to appoint an arbitrator, the other party shall have the right to request a judge of any United States District Court to make the appointment. In the event that the two arbitrators appointed as hereinbefore provided fail to agree upon and appoint a third arbitrator within fourteen days, then either party shall have the right to request a judge of any United States Court to make the appointment to complete the arbitration board. The expenses of the arbitration shall be borne by the losing party or apportioned between the parties as the arbitrators may direct.

13. This agreement shall continue for the term of any letters patent that may eventuate from the aforesaid patent application or for a term of five years should patent protection be unobtainable under application serial number 374,361 or upon any patent eventuating from the aforesaid patent application being declared invalid by a court of competent jurisdiction.

14. Upon the full performance of the conditions set forth in the agreements entered into by the parties on December 20, 1940 and the agreement with Automotive Maintenance Machinery Co. dated December 20, 1940, 1602 the agreement dated September 28, 1938 shall become merged herein and upon execution of this agreement Snap-On shall refund to Precision any reserves less proper deductions accumulated under said last named contract.

In Witness Whereof, the parties hereto have caused these presents to be executed in their name by their duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written, and all the covenants to be performed by Precision shall also be the

personal obligations of Kenneth R. Larson and Walter A. Carlson.

Walter A. Carlson Kenneth R. Larson

Precision Instrument Manufacturing Company,
By .....
President.

Attest:

Secretary.

Snap-On Tools Corporation,
By Joseph Johnson,
President.

(Seal)

Attest:
Wm. A. Seidemann,
Secretary.

1603 State of Illinois } ss:
County of Cook }

I, a Notary Public, in and for the County and State aforesaid, do hereby certify that Kenneth R. Larson and Walter A. Carlson, personally and as President and Secretary, respectivoly, of Precision Instrument Manufacturing Company, known to me to be the same persons whose names are subscribed to the foregoing instrument personally and as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument personally and as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this day of January, 1941.

Notary Public.

State of Wisconsin }
County of Kenosha } ss:

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that Joseph Johnson and William A. Seidemann, President and Secretary, respectively, of Snap-On Tools Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 21st day of January, 1941.

Marguerite Niccolai,
Notary Public.

(Seal)

1604. PLAINTIFF'S EXHIBIT NO. 19.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Rider to Agreement Executed on January 16, 1941, Between Snap-On Tools Corporation and Precision Instrument Manufacturing Company.

This rider made this 26th day of March, 1942 by and between Precision Instrument Manufacturing Company, a corporation organized under and existing by virtue of the laws of the State of Illinois, and having its principal office and place of business at Desplaines, Illinois (hereinafter for brevity referred to as Precision), and Snap-On Tools Corporation, a corporation organized and existing by virtue of the laws of the State of Delaware and having its principal office and place of business at Kenosha, Wisconsin (hereinafter for brevity referred to as Snap-On), shall constitute a modification of the Agreement executed

between the parties on January 16, 1941, in consideration of the change in economic conditions in accordance with the conditions prescribed in clause 4 of the aforesaid Agreement.

The parties hereto agree that clauses 2, 3 and 4 (pages 3 and 4) of the aforesaid Agreement dated January 16, 1941 shall be modified and corrected to read according to attached sheets containing new clauses 2, 3 and 4 which shall be substituted for, supersede and constitute a part of the Agreement dated January 16, 1941 in lieu of pages 3 and 4 thereof, these being as follows:—

1605 2. Precision agrees to exclusively furnish Snap-On with at least 6,000 Torque Wrenches of the present design of the type set forth in and improvements on patent applications serial numbers 232,723 and 317,226 filed October 1, 1938 and February 5, 1940, respectively, and to make reasonably prompt deliveries thereon to meet the requirements of contracts now held by Snap-On with the government and others at the following prevailing prices:

Snap-On Tools Catalog No.	Capacity	Stock Limit Guarantee	Price
R-20	20 ft. lbs.	Submit bid	
R-50	50 ft. lbs.	Submit bid	
R-120	120 ft. lbs.	Submit bid	
R-302	300 ft. lbs.	Submit bid	
TQ-12	12½ ft. lbs.	500	
TQ-12½	12½ ft. lbs.	250	
Tq-15	150 ft. lbs.	1000	
TQ-50	50 ft. lbs.	500	
TQ-51	50 ft. lbs.	250	
TQ-352	350 ft. lbs.	250	
602	600 ft. lbs.	125	
1003AL	1000 ft. lbs.	10	
2003AL	2000 ft. lbs.	10	
3003AL	3000 ft. lbs.	1	

The "stock limitation guarantee" prescribed above for each model wrench, shall not constitute a minimum order from Snap-On to Precision, but the maximum amount Snap-On shall be required to order out in any two (2) year period from the date of the first order covering such

wrenches under this rider. When Snap-On places an order for any of the aforesaid wrenches at any time, then Precision shall have the right to make up a number in excess of the quantity ordered to equal the "stock limit guarantee" for each model. When the amount prescribed as the "stock limit guarantee" is exhausted, Precision shall again be entitled to make up a number in excess of the amount thereafter ordered to equal the "stock limit guarantee". Snap-On agrees to order out the amount remaining on hand in any two-year period from the date that an order was placed and a "stock limit guarantee" inventory has been made up by Precision to fill such an order. This merely provides an opportunity for Precision to make up a quantity number of wrenches at any one
1606 time to reduce manufacturing costs and still insure that these will be taken out within a two-year period from the date Snap-On places an order on any model for which there is no standing "stock limit guarantee" inventory.

Such of the aforesaid wrenches which are equipped with ratchets, are priced on the basis of ratchets being furnished by Snap-On to Precision who assembles these ratchets into wrench, packs wrenches in any metal boxes furnished to it, and pack these for shipment F.O.B. Desplaines. Special wrenches shall be furnished upon price estimates mutually established therefor shall correspond as closely as possible to the prices of the nearest standard wrench size, and where quantities shall warrant, the aforesaid prices shall be adjusted to correspond proportionately with the presently established standard size and quantity wrench TQ15, all other sizes having been heretofore purchased in comparatively smaller quantities. On all models not designated with the letters "AL" (meaning models with a light indicator) light attachments to be furnished and installed complete for an extra $1.80.

3. Precision hereby agrees to assign to Snap-On application serial number 374,361 filed January 14, 1941 which shall be held as security for the performance of this contract under which Snap-On shall at all times retain an exclusive license to sell the submitted torque wrench under said patent application and any patent that may eventuate therefrom. After Precision has delivered 6000 wrenches of the present design to Snap-On at the aforesaid prices

and in accordance with the terms of this agreement, then Precision agrees to exclusively furnish to Snap-On torque wrenches of the design or type described and claimed or intended to be described and claimed in application serial number 374,361 filed January 14, 1941 at prices set forth in clause 2 hereof so long as economic and market conditions prevailing at the time of the execution of this agreement shall persist or endure. Precision warrants that
the torque wrenches supplied under the aforesaid
1607 application shall at least be as satisfactory from an
appearance, weight and accuracy standpoint, as the wrenches heretofore supplied under contract dated September 28, 1938. The finish and material of all wrenches shall correspond with government regulations covering all manufacturers of tools or as competition shall prescribe.

4. Should economic conditions change so as to warrant an increase or decrease in the aforesaid prices, then the parties shall have the right to make a cost study or analysis of raw materials, labor and sales expense on the basis of present conditions. Such analysis shall involve the right by Snap-On upon request at all reasonable business hours to examine the books, records, purchases, inventories and corporate records of Precision and present market prices and conditions shall be the basis for determining the right to an increase or decrease at the request of either party. Should these records show that a price increase or decrease is justified on the basis of present prevailing prices of raw material, labor and sales expenses, then a corresponding adjustment is to be made up or down determined upon present market conditions as a basis of the new price. Any new price arrived at upon the foregoing basis, shall be placed in effect after then existing sales contracts possessed by Snap-On shall have been fulfilled and in no case shall the new price become effective in less than sixty days from the date of such determination to be
subscribed to by both parties.

1608 It is further agreed and understood that in all other
respects the contract dated January 16, 1941 remains in full force and effect. In witness whereof, the parties hereto have caused these presents to be executed in their name by their duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written, and all the covenants to be performed by Preci-

sion shall also be the personal obligations of Kenneth R. Larson and Walter A. Carlson.

Walter A. Carlson Kenneth R. Larson

Precision Instrument Manufacturing Company,

By

President.

Attest:

Secretary.

Snap-On Tools Corporation,

By Joseph Johnson,

(Seal) *President.*

Attest:

Wm. A. Seidemann,

Secretary.

1609 State of Illinois } ss:
County of Cook }

I, H. True Wilson, a Notary Public, in and for the County and State aforesaid, do hereby certify that Kenneth R. Larson and Walter A. Carlson, personally and as President and Secretary, respectively, of Precision Instrument Manufacturing Company, known to me to be the same persons whose names are subscribed to the foregoing instrument personally and as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument personally and as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 26th day of March, 1942.

Notary Public.

State of Wisconsin }
County of Kenosha } ss.:

I, Marguerite Niccoali, a Notary Public, in and for the County and State aforesaid, do hereby certify that Joseph Johnson and William Seidemann, President and Secretary, respectively, of Snap-On Tools Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 19th day of March, 1942.

Marguerite Niccoali,
Notary Public

(Seal)

1610 PLAINTIFF'S EXHIBIT NO. 20.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

January 31, 1941

David M. Krichiver, Esq.
Attorney At Law
139 North Clark Street
Chicago, Illinois.

Re: Precision Instrument Manufacturing Company—File 11595

Dear Sir:

Precision Instrument Manufacturing Company has turned over to me your letters bearing the following dates:

April 27, 1940
July 15, 1940
December 10, 1940
January 9, 1941
January 29, 1941

My client, Snap-On Tools Corporation, has a interest in this matter insofar as an existing contract has been

breached and until such a time as Precision Instrument Manufacturing Company can discharge its obligations to my client, I am authorized by Snap-On Tools Corporation to participate in the affairs of the Precision Instrument Manufacturing Company in every way possible to see that they are not interfered with and present commitments can be fulfilled to the best of their ability.

I have a fairly good history of the events that culminated into the interference settlement between Precision Instrument Manufacturing Company, on one hand, and Automotive Maintenance Machinery Company, on the other hand. It appears that you have been an adverse participant in the affairs of the Precision Instrument Manufacturing Co. as a nominal shareholder, possessing no more than five shares, with an interest that glaringly is self serving and to those who apparently have a better insight of the situation; said adverse participation was short-sighted and not only impaired the interests of Precision Instrument Manufacturing Company, your client, George Thomasma, but also yourself.

There are a great many people who are too short-sighted to become aware of the fact that their activities are tantamount to the old expression "cutting off your nose to spite your face". In my opinion you have done an admirably good job in doing this for yourself and to say the least not even the opponents of Precision Instrument Manufacturing Company who alone benefitted, respect you for your participation. This is natural in that no one admires a wrong doer and that is precisely the classification that I must assign to you.

As a lawyer, you should know that only constructive participation helps everyone concerned and thus far your efforts have been self destructive. Of course, having only five shares involved you appear to have everything to gain and nothing to lose by attempting to profit beyond the pro rata representation of your stock interest. If everything you attempt to indicate is true, then not only Precision Instrument Manufacturing Company, but also its directors and stockholders will become personally liable for creating a situation that was instrumental in the failure to fulfill the terms of the agreement with Snap-On Tools Corporation. As a stockholder, I definitely will turn to you to carry your share of the personal responsibility for such unauthorized action which you participated in.

not only as attorney for Mr. Thomasma, but also in your own behalf as a stockholder.

Your letter sounds like that of a dictator of Hitler's style. You seem to take it upon yourself as a five-share stockholder to be the judge, prosecutor and jury. I happen to have had a first-hand statement from Mr. Thomasma in the presence of the principals of Automotive Maintenance Machinery Company and its attorneys, wherein Mr. Larson was given credit for the major part of the development that entered into the result constituting the basis of the patent application which was assigned to Automotive Maintenance Machinery Company under the terms of the settlement that was necessitated through your own action and your action alone. I should say that if your dictatorial command in your letter of January 29, 1941 was written by those authorized in behalf of Precision Instrument Manufacturing Company and directed to you, then perhaps the demand would not appear so unwarranted nor unreasonable.

Under the circumstances, you had better bring suit immediately in that I feel that Precision Instrument Manufacturing Company would have the basis for a meritorious counterclaim that no doubt will result in the revocation by a court of competent jurisdiction of the certificate of stock now possessed by you.

Yours very truly,

HCA:EM Harry C. Alberts.

1612 PLAINTIFF'S EXHIBIT NO. 21.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

April 27, 1940

Precision Instrument Manufacturing Co.
1843 Miner Street
Desplaines, Illinois

Gentlemen:

I am the owner of five shares of the capital stock of your corporation and am desirous of obtaining a certificate for five shares of stock in my own name.

Kindly advise me when and where I may obtain this.

Yours very truly,

DMK:ER

1613 July 15, 1940

Mr. Walter Carlson
c/o Precision Manufacturing Company
1419 Miner Street
Des Plaines, Illinois

Dear Sir: —

Will you kindly tell Mr. Larsen that I would like to talk to both of you in my office concerning the Precision Instrument Company.

I think it would be to your best interest to see me at which time I can outline to you my future course of action.

Yours truly,

David M. Krichiver.

DMK:LM

1614 December 10, 1940

Precision Instrument Mfg. Co.
1846 Miner Street
Des Plaines, Illinois

Gentlemen:

In connection with an alleged board of directors meeting supposedly held on November 16, 1940, you are hereby advised and notified that my client, George Thomasma, has not been sent a copy of the minutes of that meeting, and that he has no knowledge of what has supposedly taken place at that meeting, if any meeting was held, and that until such time as he receives a copy of the minutes of that meeting, if any was held, he does hereby object to each and every one of the acts of the board of directors and he will so continue to object to each and every one of the acts and deeds of the board of directors which supposedly took place on November 16, 1940.

Should you desire to submit a copy of the minutes of that alleged meeting, the same may be sent either directly to him or to him in care of my office.

Yours truly,

David M. Krichiver.

DMK:LM

1615 Form 3806 (Rev. Jan. 21, 1935)

Receipt for Registered Article No. 318561
Registered at the Post Office indicated.
Fee paid 15 cents Claim postage (Postmark of)
Declared value Surcharge paid, $ Chicago, Ill.
Return Receipt fee Spl. Del. fee (Sta. E)
Delivery restricted to addressee; Jan 9 1941
in person , or order Fee paid Registered
Accepting employee will place his ini- (Mailing Office)
tials in space indicating restricted deliv-
ery.

Postmaster, per

Return Receipt Requested.

The sender should write the name of the addressee on back of proof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnity.—Domestic registry fees range from 15 cents for indemnity not exceeding $5 up to $1 for indemnity not exceeding $1,000. The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 15 cents. Consult postmaster as to the specific domestic registry fees and surcharges and as to the registry fees chargeable on registered parcel-post packages for foreign countries. Fees on domestic registered C. O. D. mail range from 25 cents to $1.20. Indemnity claims must be filed within one year (C. O. D. six months) from date of mailing.

1616 January 9, 1941

Precision Instrument Mfg. Co.
1846 Miner Street
Des Plaines, Illinois

Attention: Mr. Walter Carlsen, Secy.

Gentlemen:

It is my understanding that the by-laws of this Corporation provide for an annual stock holders meeting to be held on the second Monday in January with the time and place of said meeting usually set by the directors.

The law of the State of Illinois also provides that notice of the time and place of the annual meeting of stock holders shall be given at least ten days prior to such meeting.

As yet, I have not received any notice for this annual meeting which should be called for January 13, 1941.

I am hereby making demand upon you to arrange for said meeting, and advise me of the date thereof. If I do not hear from you within the next few days, I shall take such action as is available to me.

Yours truly,

David M. Krichiver.

DMK:LM

1617

January 29, 1941

Mr. Kenneth Larsen
c/o Precision Instrument Mfg. Co.
1840 Miner Street
DesPlaines, Illinois

Dear Sir:

As a stockholder of the Precision Instrument Manufacturing Company, I am hereby making demand upon you to turn in to the corporation for cancellation the 260 shares of stock you now hold in the Precision Instrument Manufacturing Company on the grounds that there is no consideration given by you for these shares.

Should you fail to turn in your stock for cancellation within the next three days I shall file suit against you on behalf of myself and the other stockholders similarly situated and the corporation to enjoin you from acting for and on behalf of the corporation and to have the court cancel your holdings.

Yours very truly,

David M. Krichiver.

DMK:LM

1618 PLAINTIFF'S EXHIBIT NO. 21.

January 29, 1941

Mr. Walter Carlsen
c/o Precision Instrument Mfg. Co.
1846 Miner Street
DesPlaines, Illinois

Dear Sir:

I have this day made a demand upon Kenneth Larsen to turn in to the corporation for cancellation the 260 shares

of stock which he holds on the grounds that said stock was issued to him without consideration.

I am hereby requesting you as secretary and treasurer of the corporation to request Mr. Larsen to turn in his stock for cancellation on the same grounds.

In the event Mr. Larsen's shares of stock are turned in for transfer on the books of the corporation, you are hereby notified to refuse such request on the grounds that said stock had been issued without consideration and are therefore null and void, or be personally liable for those shares.

I have advised Mr. Larsen that if he fails to turn in his stock within the next three days I will institute a suit against him enjoining the transfer of the shares he holds and asking the cancellation of the shares issued to him.

I am still awaiting notice of the annual meeting of shareholders, which according to the by-laws of this corporation should have been held on the second Mon-
1619 day of January. If I do not hear from you within the next few days concerning a meeting of the shareholders, I shall write the other stockholders and arrange a meeting as provided for in the by-laws and in the Statutes of the State of Illinois.

Yours truly,

DMK:LM David M. Krichiver.

1620 PLAINTIFF'S EXHIBIT NO. 22.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 26, 1940

Mr. Harry C. Alberts
38 South Dearborn Street
Chicago, Illinois

Dear Mr. Alberts:

Re: Larson v. Zimmerman
Interference No. 77,565

I enclose a copy of a letter I have just written to Mr. Rafferty, the reporter, as suggested during our conference of December 24th.

Very truly yours,

F:J
Enclosure

1621 PLAINTIFF'S EXHIBIT NO. 23.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

December 31, 1940

Mr. M. K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference

I wish to thank you for your letter of December 30th enclosing a corrected assignment of the Larson application Serial No. 232,723 from Snap-On to Precision and Larson.

This assignment now appears to be in proper form and I intend to send it, together with the other assignment (Larson and Precision to Automotive) and the concession of priority, to the Patent Office in the very near future.

As requested in your letter, I return herewith the originally executed assignment.

I appreciate very much your efforts respecting the statements to be furnished under the settlement agreements. These statements should be furnished promptly and I know that you are doing everything possible to that end.

As to the testimony and Thomasma statement matters, I am holding everything subject to your call.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F:F.
Enclosure

867

Feb. 23, 1943. K. R. LARSON 2,312,104

TORQUE WRENCH

Filed Jan. 14, 1941 2 Sheets-Sheet 1

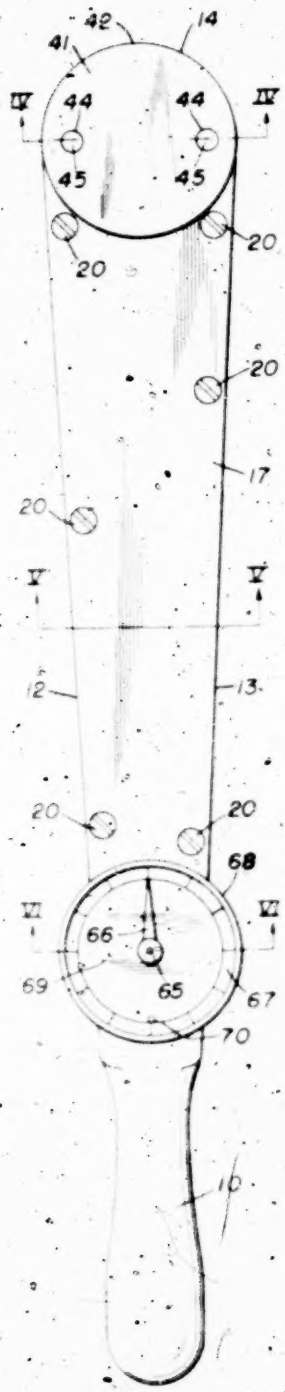


FIG 1



FIG 2



FIG 3

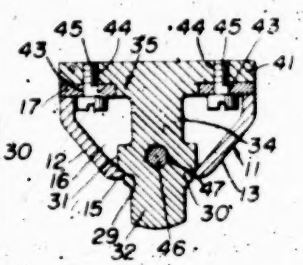


FIG 4

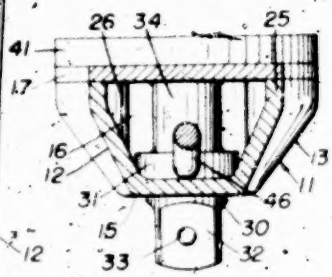


FIG 5

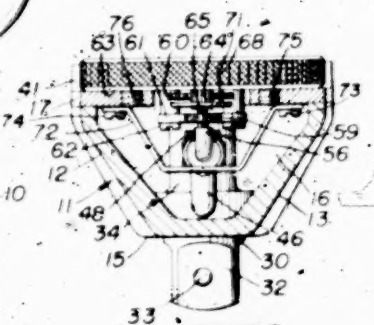


FIG 6

INVENTOR
KENNETH R LARSON
BY Harry C. Beitzel
ATTORNEY

869

Feb. 23, 1943. K. R. LARSON 2,312,104

TORQUE WRENCH

Filed, Jan. 14, 1941 2 Sheets-Sheet 2

FIG 7

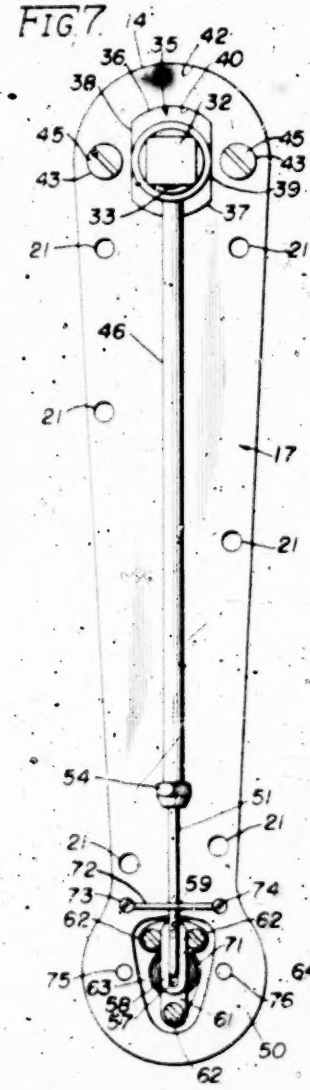


FIG 8

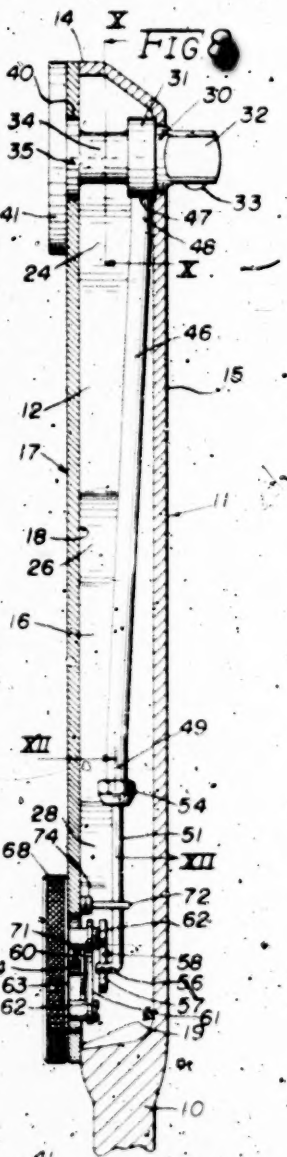


FIG 9

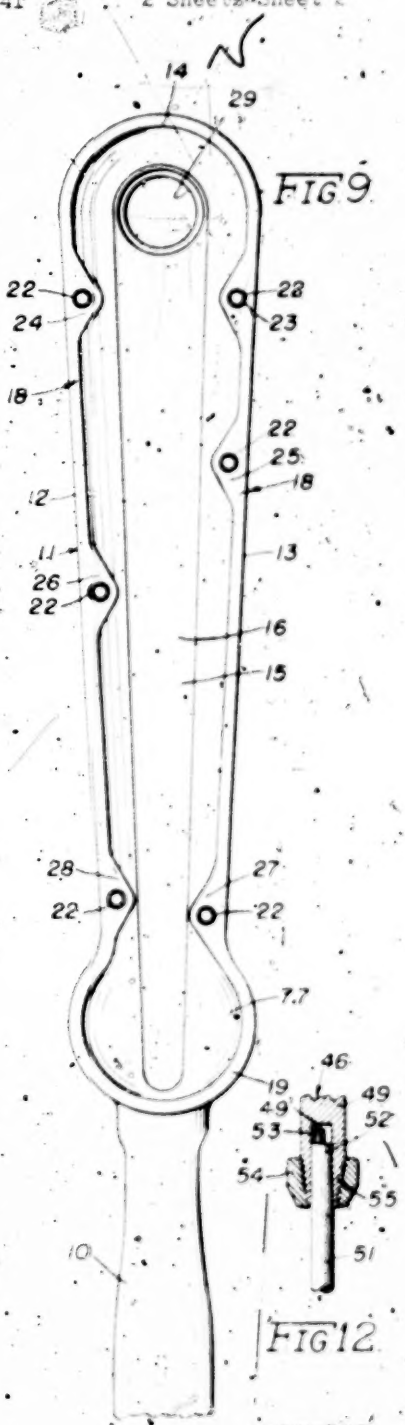


FIG 10

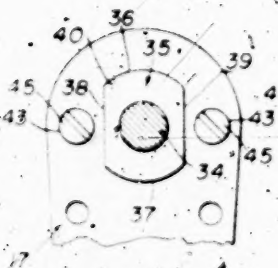


FIG 11

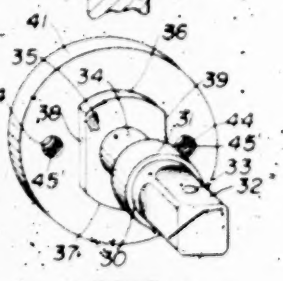


FIG 12

INVENTOR
KENNETH R LARSON
BY Harry C. Adkins
ATTORNEY

1624 PLAINTIFF'S EXHIBIT NO. 25.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

390

Department of Commerce

United States Patent Office

To all persons to whom these presents shall come, Greeting:

This Is to Certify that the annexed is a true copy from the records of this office of the Original Petition and Oath, in the matter of the Letters Patent of Kenneth R. Larson, assignor to Snap-On Tools Corporation, Number 2,312,104, Granted February 23, 1943, for Improvement in Torque Wrenches.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this eighth day of May, in the year of our Lord one thousand nine hundred and forty-three and of the Independence of the United States of America the one hundred and sixty-seventh.

Conway P. Coe,
(Seal) *Commissioner of Patents.*

Attest:
C. G. Rains,
For Chief of Division.

1625 (Stamp) Mail Division Jan 14 1941 U S Patent Office.

(Stamp) U. S. Patent Office Jan 22 1941 Division 36.

In the United States Patent Office,

Petition

To the Commissioner of Patents:

Your petitioner, Kenneth R. Larson, a citizen of the United States and a resident of Desplaines, in the County of Cook, and State of Illinois, whose post-office address is 1206 Center Street, Desplaines, County of Cook, and State of Illinois, United States of America, prays that letters

patent may be granted to him for the improvements in a Torque Wrench set forth in the annexed specification.

The undersigned hereby appoints Harry C. Alberts, Esq., Register No. 12,438, of 38 South Dearborn Street, (First National Bank Building), Chicago, State of Illinois, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Kenneth R. Larson.
Kenneth R. Larson.

1626 Oath.

State of Wisconsin } ss:
County of Kenosha }

Kenneth R. Larson, the above named petitioner, being sworn, deposes and says that he is a citizen of the United States, and a resident of Desplaines, County of Cook, and State of Illinois, that he verily believes himself to be the original, first and sole inventor of the improvements in a Torque Wrench described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by him or his legal representatives or assigns in any country foreign to the United States.

Kenneth R. Larson.
Kenneth R. Larson.

Subscribed and sworn to before me, a Notary Public, this 26th day of December, 1940.

Marguerite Meisler,
Notary Public.

My Commission expires November 30, 1941.

1627 PLAINTIFF'S EXHIBIT NO. 26.

(Letterhead of Automotive Maintenance Machinery Co.
North Chicago, Ill.)

June 30, 1941

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

We happen to know that Precision are still manufacturing wrenches. Our information is to the effect that they are working about six men steadily.

Inasmuch as clean-handed Joe Johnson does not like us very well I suggest that you write Precision and Snap-On and ask them the status of the matter in question; and when they will respectively cease manufacturing and buying wrenches that infringe our patents.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,
Fred G. Wacker,
Pres.

fgw/ms

1628 PLAINTIFF'S EXHIBIT NO. 29.

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

December 6, 1940

Mr. M. K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Larson v. Zimmerman—Intf. 77,565 Snap-On Tools Corporation and Precision Instrument Manufacturing Co.

Mr. Frederick G. Wacker, President of Automotive Maintenance Machinery Co., owner of the Zimmerman application involved in the above interference, is quite anx-

ious to dispose of this interference situation at an early date. Mr. Wacker is particularly concerned because of the existing trade situation respecting the form of wrench in question. It is his position that, due to the nature of the competition that he must meet with respect to the wrench, he is being additionally damaged each day that the matter is delayed. I appreciate your situation, which involves, no doubt, dealing with groups whose interests have become adverse, and I have explained that fully to Mr. Wacker. I am sure that you understand my position and I feel certain that you too want to dispose of the matter as soon as possible.

I took up the matter with Mr. Wacker as soon as possible after our conference last Monday, and he in-
1629 formed me that it would be satisfactory to terminate the interference as proposed by you,—namely, by Larson conceding priority to Zimmerman and by payment to Automotive Maintenance Machinery Co. of a sum equal to a certain royalty per wrench for wrenches already made and wrenches on order and to be made in fulfillment of orders already given, and further agreement to discontinue the manufacture and sale of the wrench as soon as the orders on hand had been filled.

In talking to Mr. Wacker, I asked for his proposition respecting royalty, at the same time pointing out that you are interested in settling the matter quickly and on as reasonable a basis as possible. It was and now is Mr. Wacker's position that the original offer as to royalty should come from Precision and Snap-On. His specific instructions, as given to you on the telephone by my secretary, were:

"Mr. Wacker will consider any proposition that is substantial, that is in good faith, and is underwritten by Snap-On. He wants their idea as to what they are willing to offer in order to meet those conditions."

In other words, any settlement would necessarily have to include both Precision and Snap-On, particularly if a full and complete release is given to both concerns. Also, Precision's status is such that any arrangement would have to be guaranteed or underwritten by Snap-On, so-to-speak.

If Mr. Wacker does not accept the offer originally proposed, he will undoubtedly make some suggestions. In that event it may be necessary to get our principals to-

gether in conference so that all questions may be disposed of at one time.

1630 I am still confined at home but I am quite sure that I will be in my office next Monday morning and I will be glad to cooperate with you in every possible way with the thought of bringing this matter to an immediate conclusion.

With kindest personal regards, I am

Very truly yours,

F:J R. E. Fidler.

1631 PLAINTIFF'S EXHIBIT NO. 30.

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

Mr. Harry C. Alberts December 18, 1940
38 South Dearborn Street
Chicago, Illinois

Dear Mr. Alberts:

Re: Larson v. Zimmerman Interference No. 77,565

We are serving on you herewith a demand that a copy of the transcript of testimony of the witnesses Kenneth R. Larson, Landen C. Hymes, William J. Ladendorf, Clifford Whittaker and Walter Carlson be delivered to us not later than Friday morning, December 20, 1940.

Coupled with the demand is a notice of the taking of testimony. Our first witness will be the reporter, Mr. Thomas Rafferty, whom we are serving with a subpoena this day.

Pursuant to the notice, we will begin taking of testimony at 9:30 o'clock Monday morning, December 23, 1940.

Our client has informed us that it desires to prosecute this interference with all possible speed. We have advised them that they are fully justified in demanding speed in view of the situation, concerning which you are fully informed.

1632 For your information, we also advise that, at the conclusion of the taking of testimony here, we will proceed to Kenosha, Wisconsin, to take several depositions there. We will give you notice of these depositions later.

Very truly yours,

L:J Harry W. Lindsey Jr.

CC: Mr. W. K. Hobbs

1633 PLAINTIFF'S EXHIBIT NO. 31.

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

December 18, 1940

Mr. W. K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Larson v. Zimmerman Interference No. 77,565

Merely to keep you fully advised, I am enclosing a copy of my letter of this morning to Mr. Alberts, together with a copy of the demand and notice of taking depositions.

I am sorry that it is necessary to proceed, but in view of the excessive demands of Snap-On, particularly in the light of all the circumstances, there is nothing else for us to do.

Very truly yours,

EJ Harry W. Lindsey, Jr.

1634 PLAINTIFF'S EXHIBIT NO. 32.

(Letterhead of Harry C. Alberts—Chicago.)

December 18, 1940

Haight, Goldstein and Hobbs
209 South La Salle Street
Chicago, Illinois.

Attention: Mr. M. K. Hobbs

Re: Larson-Zimmerman Interference No. 77,565
File 11484

Dear Mr. Hobbs:

I am enclosing herewith copy of notice of taking testimony served upon me and am handing it to you for any further action you may deem fit as attorney for Larson.

Further, please find enclosed a substitute power of attorney so that you may proceed with the interference or otherwise protect Mr. Larson's interests as such may appear.

At a conference held on November 28, 1940 with Mr. Fidler and his clients, Mr. Frederick G. Wacker, Mr.

Allen, as representatives of the Automotive Maintenance Machinery Co., on one hand, and Mr. Joseph Johnson and the writer, as representatives of Snap-On Tools Corporation, on the other hand, I stated that I would withdraw as attorney for Kenneth R. Larson in view of the alleged charges and counter-charges that certain testimony of Larson and Carlson was not the entire truth and that because of this collateral issue, the future prosecution of the interference might develop a conflict of interests between Snap-On Tools Corporation and Kenneth R. Larson. For that reason, I do not feel justified in continuing as attorney for Mr. Larson.

It is my recollection that our November 29, 1940, you were retained by Mr. Larson to represent his interests and since that time negotiations were had by you with Messrs. Lindsey and Fidler of Davis, Lindsey, Smith and Shontz. I ask, therefore, that you proceed to file the substitute power of attorney in the United States Patent Office and thus relieve me of any further responsibility as the present attorney of record for Kenneth R. Larson in Interference No. 77,565.

1635 You will recall that I requested that my withdrawal as attorney of record be made known to the Patent Office on November 29, 1940 or as soon thereafter as a substitute power of attorney could be filed, but you were of the belief that the interference would be settled and there would be no need for any formal withdrawal as attorney of record in interference no. 77,565.

Further, I wish to advise that my client, Snap-On Tools Corporation, shall be ready and willing to re-assign Larson's patent application serially numbered 232,723 to Larson just as soon as Mr. Larson can furnish tangible security to indemnify Snap-On Tools Corporation for any damages occasioned to it by virtue of Larson's or his nominee's inability to comply with the terms of the agreement of September 28, 1940.

Please notify Messrs Larson and Fidler to direct all future notices to you rather than the writer.

Yours very truly,

Harry C. .....

HCA:BM

Cc: Mr. Harry W. Lindsey, Jr. of
Davis, Lindsey, Smith and Shontz
Snap-On Tools Corporation

1636 PLAINTIFF'S EXHIBIT NO. 33.

December 18, 1940

Precision Instrument Mfg. Co.
and
Kenneth R. Larson
1846 Miner Street
Des Plaines, Illinois

Gentlemen:

We talked to Mr. Larson this morning after the receipt of a copy of a letter of December 17, 1940, written by Harry C. Alberts, attorney for Snap-On Tool Corporation to Davis, Smith, Lindsey and Shonts. To the principles of settlement discussed by Mr. Fidler, Mr. Lindsey, Mr. Alberts and ourselves, the letter referred to above injects additional elements which the attorneys for Automotive Maintenance Machinery Co. flatly refuse to accept. Apparently all efforts at settlement have failed. The attorneys for the party Zimmerman in Interference No. 77,565 have today served notice of taking of testimony beginning December 25, 1940 at 9:30 A. M.

We are disappointed that the efforts to settle have come to naught. We put earnest and vigorous effort into securing a settlement which would leave it open to Precision to proceed in business and with release to it and to Mr. Larson from all claims for damages arising out of the interference and the incident circumstances. This we could have secured. We sought also to secure freedom of interference in the manufacture and sale of existing orders, and protection to customers for orders already filled and those on hand. This we could have secured. We sought also to get the unchallenged right to make, use and sell the clutch and indicating mechanism, the subject of a Larson application not in interference. This we could have secured. We sought also to get the return of the stock held by George Thomasma. This we could have secured without cost to Precision. In our judgment the settlement proposed should have been accepted by Snap-On and by yourselves. We so advised you.

Without the settlement, Precision is in a precarious position. Between the upper millstone of Ameo and nother millstone of Snap-On, the outlook for the future is not sanguine.

1637 We told Mr. Larson a week or so ago that if settlement could not be effected, we could not go into or assume any responsibility in the interference. Our schedule of engagements and trials for regular clients make it impossible to do so. We also made the same statement to Mr. Alberts in the presence of Mr. Lindsey and Mr. Fidler. Quite properly, therefore, in serving a notice of the taking of depositions, the attorneys for Amco and Zimmerman addressed it to the attorney of record in the interference, sending a copy to us "merely to keep you fully advised".

If you intend to proceed with the interference, it will be necessary either to have Mr. Alberts continue or to secure some other counsel. We think you should give very serious consideration to whether you desire to spend any additional funds in the interference.

So that you may be fully advised in respect to the notice, a copy is enclosed herewith. You will observe that in acknowledging service Mr. Alberts added to the original served upon him the words which appear on your copy in longhand. The statement "substituted by M. K. Hobbs November 28, 1940" is not correct.

A copy of this letter is sent to Mr. Alberts.

Yours very truly,

Haight, Goldstein & Hobbs,

MKH:FS By .....

Enclosure

1638 PLAINTIFF'S EXHIBIT NO. 34.

(Letterhead of Haight, Goldstein & Hobbs—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 19, 1940.

Mr. Harry C. Alberts,
38 South Dearborn St.,
Chicago, Illinois.

Dear Mr. Alberts:

Re: Larson-Zimmerman Interference
No. 77,565, File 11484

I told Mr. Larson a week or more ago that if the above matter could not be settled, we were not in a position to

proceed to represent him. We made the same statement to you last Saturday, the 14th, in the presence of Mr. Fidler and Mr. Lindsey. We are therefore unwilling and unable to accept or to file your substitute power of attorney, which we return herewith.

We received yesterday a copy of the demand and notice served upon you by the attorneys for Zimmerman, which copy was sent to us by said attorneys "merely to keep you (us) fully advised". We very much regret that the matter has not been settled. It was and is our judgment that settlement upon the principles discussed at the conference in this office on Saturday last attended by you, Mr. Lindsey and Mr. Fidler was for the best interests of all of the parties concerned.

In accordance with your letter, we will advise Mr. Larson that it is your client's desire to re-assign the Larson application Ser. No. 232,723, which we understand is the application in interference; but that this desire is conditioned upon Mr. Larson's furnishing tangible security to indemnify Snap-On for any damages occasioned by inability to comply with the terms of the contract of September 28, 1940. Under the circumstances, the condition imposed seems to us unreasonable. Further we know of no security available.

Inasmuch as you sent a copy of your letter to us to Mr. Lindsey, in which letter you ask us to notify him and Mr. Fidler to direct all future notices to us, we are sending a copy of this letter to Mr. Lindsey; and also a copy to Mr. Larson.

Yours very truly,
Haight, Goldstein & Hobbs.

MKH:FS—Enclosure.

1639 PLAINTIFF'S EXHIBIT NO. 35

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. Kenneth Larson, December 19, 1940.
Precision Instrument Mfg. Co.,
1864 Miner St.,
Des Plaines, Illinois.

Dear Mr. Larson:

We enclose herewith a copy of a letter written today to Mr. Alberts. I still believe that you and Precision might

effect a settlement with Amco, which settlement would require a concession of priority; but this cannot be given unless and until the application involved in the interference is re-assigned to you or to your nominee.

Yours very truly,

Haight, Goldstein & Hobbs,

By

MKH:FS.
Enclosure.

1640 PLAINTIFF'S EXHIBIT NO. 36

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 23, 1940.

Mr. M. K. Hobbs,
Haight, Goldstein & Hobbs,
209 South La Salle Street,
Chicago, Illinois.

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference.

Confirming our telephone conversation of last Saturday,—

I enclose two copies of the Automotive-Precision-Larson agreement. I also enclose the original and two copies of a proposed assignment coverng transfer of the Larson application to Automotive, together with the original and two copies of a concession of priority by Mr. Larson to Mr. Zimmerman.

The original and duplicate-originals of this agreement were sent to Mr. Wacker Saturday for his approval and execution. I expect to have these back in my hands early tomorrow morning.

I also sent the Automotive-Snap-On agreement to Mr. Alberts for transmission to Snap-On, the duplicate-original of such agreement being sent to Mr. Wacker. As I am informed the signed copies of these agreements will be in the hands of the respective attorneys early tomorrow morning. As I further understand, all parties expect to 1641 have all preliminary matters taken care of by tomorrow morning so that the matter can be finally disposed of at that time.

I would appreciate it if you would let me have, before tomorrow morning if possible, a copy of the cross-release with respect to Mr. Thomasma that you are preparing. I would also appreciate it if you would let me see a copy of the assignment by Snap-On transferring the Larson application to Precision. This, of course, is important to Automotive from the standpoint of title.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F:J.
Enclosures.

1642 PLAINTIFF'S EXHIBIT NO. 37.

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 26, 1940.

Mr. M. K. Hobbs,
Haight, Goldstein & Hobbs,
209 South La Salle Street,
Chicago, Illinois.

Dear Mr. Hobbs:

Re: Larson v. Zimmerman
Interference No. 77,565.

I enclose a copy of a letter that I have just written to Mr. Rafferty, who reported the Larson testimony. I believe this letter covers all the material that was to be turned over to Mr. Albetts.

I have forwarded the signed copies of the Automotive-Precision-Larson agreement to Automotive in order that they may be initialed opposite the changes made on page 4 thereof. Mr. Wacker, President of Automotive, has approved the changes in question.

Very truly yours,

R. E. Fidler.

F:J.
Enclosure.

1643 PLAINTIFF'S EXHIBIT NO. 38

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. Harry C. Alberts, December 26, 1940.
38 South Dearborn St.
Chicago, Illinois.

Dear Alberts:

Re: Larson-Zimmerman Interference.

I told you on the 24th that on behalf of Precision I would like to have a more formal assignment of the Larson application involved in the interference than the one which you furnished to us in connection with the general settlement agreement. I have prepared such assignment, which is copied verbatim from the one prepared by you, except as to the execution and acknowledgement parts. I may be extra cautious in making this request, but it will not be difficult for you to comply with; and I do not wish the burden of a complaint cast upon me or upon Precision that we did not secure a self proving assignment.

The original and a copy of the assignment herein proposed are enclosed.

Yours very truly,
Haight, Goldstein & Hobbs,
By

MKH:FS.
Enclosure.

1644 PLAINTIFF'S EXHIBIT NO. 39

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. M. K. Hobbs, December 28, 1940.
Haight, Goldstein & Hobbs,
209 South La Salle Street,
Chicago, Illinois.

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference.

I am pleased to return herewith the fully executed copy of the Automotive-Precision-Larson agreement which you gave to me last Tuesday for initialing by Mr. Wacker.

You will note that Mr. Wacker has initialed the changes on page 4.

As to other clean-up matters that we discussed last Tuesday, I will be glad to go into the same with you whenever you are ready.

Wishing you a Happy and Prosperous New Year, I am

Very truly yours,

R. E. Fidler.

F:J.
Enclosure.

1645 PLAINTIFF'S EXHIBIT NO. 40

(Letterhead of Harry C. Alberts—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 28, 1940.

Haight, Goldstein and Hobbs,
209 South LaSalle Street,
Chicago, Illinois.

Attention: Mr. M. K. Hobbs.

Re: Assignment from Snap-On Tools Corporation to Precision Instrument Manufacturing Company of Patent Application Serial No. 232,723 File 11580.

Dear Mr. Hobbs:

I am enclosing herewith new assignment from Snap-On Tools Corporation to Precision Instrument Manufacturing Company of application serial number 232,723 filed October 1, 1938.

This assignment is being re-submitted to correct the name of the assignee and to provide a complete notarial acknowledgment of the assignor's signature.

Please see that the assignment heretofore submitted is returned to the writer.

Yours very truly,

Harry C. Alberts.

HCA:EM.
Encl.

1646 PLAINTIFF'S EXHIBIT NO. 41.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 30, 1940.

Precision Instrument Manufacturing Company,
1846 Miner Street,
DesPlaines, Illinois.

Attention: Mr. Larson.

Gentlemen:

You will recall that the settlement agreement with Automotive was changed in one particular on page 4. These changes have been initialled by Mr. Wacker on a completely executed duplicate of the agreement. Such agreement is handed to you herewith.

Please send to me promptly the statement required to be made under this agreement. I am asked for it daily by Mr. Fidler.

Yours very truly,
Haight, Goldstein & Hobbs,
By

MKH:ES.
Enclosure.

1647 PLAINTIFF'S EXHIBIT NO. 42.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 30, 1940.

Mr. R. E. Fidler
Davis, Lindsey, Smith & Shonts,
332 South Michigan Ave.
Chicago, Illinois

Dear Mr. Fidler:

We enclose herewith a corrected assignment of Larson application Ser. No. 232,723 from Snap-On to Precision and Larson. The corporate name of Precision now appears correctly, and we believe the assignment to be self-proving. The date of execution is the 20th of December with

acknowledgment on the 27th. Will you please return to us the assignment originally handed you. It will serve no useful purpose to you and we wish to return it to Mr. Alberts, at his request, for such disposition as he sees fit.

We acknowledge in today's mail a receipt from you of a fully executed copy of the Automotive Precision-Larson agreement, with certain changes which were made therein initialed by Mr. Wacker.

I am jogging Snap-On and Precision for the statements required to be furnished to you under the settlement agreements.

Yours very truly,
Haight, Goldstein & Hobbs,
By M. K. Hobbs.

MKH:FS
Enclosure

(Stamp:) Received Dec. 31, 1940. Davis, Lindsey, Smith & Shouts.

1648 PLAINTIFF'S EXHIBIT NO. 43.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

January 2, 1941

Mr. Harry C. Alberts
38 South Dearborn St.
Chicago, Illinois

Dear Mr. Alberts:

You will recall that the first assignment given to Larson and Precision incorrectly gave the corporate name of the latter and that the execution and acknowledgment of the assignment did not make it self-proving. Consequently you gave us another assignment. We therefore return to you the assignment first submitted.

Yours very truly,
Haight, Goldstein & Hobbs,
By

MKH:FS

1649 PLAINTIFF'S EXHIBIT NO. 44.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

Mr. R. E. Fidler January 4, 1941
332 South Michigan Ave.
Chicago

Dear Mr. Fidler:

Re: Larson-Zimmerman Interference

We send you herewith an original holographic statement of Precision of wrenches on order. He have kept a photostatic copy for our files.

Yours very truly,
Haight, Goldstein & Hobbs,
By M. K. Hobbs,

MKH:FS
Enclosure

(Stamp:) Received Jan. 6, 1941. Davis, Lindsey, Smith & Shouts.

1650 Statement of Wrenches on Order & Not Filled Dec. 20, 1940, Pursuant to Agreement of Dec. 20, 1940, with (illegible).

Date of Order	Order No.	No. of Wrenches Ordered	No. of Wrenches not yet delivered
9-27-39	13110	8	2
6-27-40	18052	1886	377
10-10-40	19503	1500	1225
11- 8-40	20050	821	821
11-11-40	20055	1	1
11-12-40	20084	2490	2490
11-13-40	20117	14	12
11-26-40	20359	1	1
12- 2-40	20485	3	3
11- 1-40	20494	1500	1500
12-13-40	20799	2	2
		8226	6434

Precision Instrument Mfg. Co.,
Walter Carlsen,
Sec. Treas.

1651 PLAINTIFF'S EXHIBIT NO. 45.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago)

Mr. M. K. Hobbs January 6, 1941
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference

I wish to thank you for your letter of January 4th enclosing an original holographic statement of Precision of wrenches on order, according to the Automotive-Precision-Larson interference settlement agreement recently entered into.

The original statement has been forwarded to Automotive and I have retained a photostatic copy of the same in my file.

Very truly yours,

F:J R. E. Fidler.

1652 PLAINTIFF'S EXHIBIT NO. 46.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago)

Mr. Merville K. Hobbs July 2, 1941
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Precision—Automotive Agreement Respecting Torque Wrenches

Mr. Frederick H. Wacker of Automotive Maintenance Machinery Co. has asked me to determine whether or not Mr. Larson and Precision Instrument Manufacturing Company of Des Plaines, Illinois, have completed the manufacture of torque wrenches permitted under the Automotive-Larson-Precision agreement entered into on Decem-

ber 23, 1940, in connection with the termination of the Larson-Zimmerman Interference No. 77,565.

Any information that you can give me respecting the status of this matter will be greatly appreciated.

With kindest regards, I am

Very truly yours,

F:J R. E. Fidler

1653 PLAINTIFF'S EXHIBIT NO. 47.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

July 3, 1941

Precision Instrument Mfg. Co.
DesPlaines, Illinois

Attention: Mr. Larson

Gentlemen:

We have an inquiry from the attorneys for Automotive Maintenance Machinery Co. inquiring whether you have completed the manufacture of torque wrenches permitted under the Automotive-Larson-Precision agreement entered into on December 23, 1940 in connection with the termination of the Larson-Zimmerman interference.

We feel that the inquiry is a proper one. If you will advise us of your answer, we will forward it to Mr. Fidler.

Yours very truly,

Haight, Goldstein & Hobbs

MKH:FS By

1654 PLAINTIFF'S EXHIBIT NO. 48.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Precision Instrument Manufacturing Co., Des Plaines, Illinois)

July 16, 1941

Mr. M. K. Hobbs
Haight, Goldstein & Hobbs
209 S. LaSalle St.
Chicago, Illinois.

Dear Mr. Hobbs:

We have your letter of July 3, 1941 and our records show that since signing the contract with Automotive Mainte-

nance Machinery Co., we delivered to Snap-On Tools Corporation 4,948 wrenches, and there are still 1052 to be delivered just as soon as we have sufficient steel available to complete these wrenches. This makes the total of 6000 wrenches within the limit of the settlement contract.

Snap-On Tools Corporation originally ordered 6,434 wrenches, but have reduced Order No. 20494 calling for 1500 150' lb. wrenches to 1066.

This gives you the information that is requested.

Yours very truly,
Precision Instrument Mfg. Co.
By Kenneth R. Larson

1655 PLAINTIFF'S EXHIBIT NO. 49.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

July 21, 1941

Raymond D. Fidler, Esq.
332 South Michigan Avenue
Chicago, Illinois

Dear Mr. Fidler:

We enclose a copy of a letter dated July 16, 1941, from Precision Instrument Manufacturing Co., in respect to the wrenches still to be built under the agreement with Automotive Maintenance Machinery Co.

Yours very truly,
Haight, Goldstein & Hobbs,
By M. K. Hobbs

MKH:FS

1636 PLAINTIFF'S EXHIBIT NO. 50.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 19, 1940

Mr. Harry C. Alberts
38 South Dearborn St.
Chicago, Illinois

Dear Mr. Alberts:

Re: Larson-Zimmerman Interference

Mr. Larson first consulted us on November 28, or 29, 1940. We immediately took steps to settle that matter and its attendant charges and counter-charges. From the date mentioned until the service of notice for taking testimony yesterday by the attorneys for Zimmerman, no steps or proceedings of which we are aware, were taken in the interference, save for the efforts being made to adjust the matter.

In these efforts and negotiations we represented Larson and Precision Instrument Mfg. Co.

We understand that with the possibility of adverse interests arising between Snap-On Tools Corporation and Larson, you quite property wish to withdraw as attorney for Larson. We have so advised Larson, and also of the necessity of his engagement of other counsel to represent him.

Yours very truly,

Haight, Goldstein & Hobbs,

MKH:FS By

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FILED

HARRY C. ALBRIGHT
PATENT, TRADE MARK, COPYRIGHT
UNFAIR COMPETITION AND CORPORATION LAW
FIRST NATIONAL BANK BUILDING
CHICAGO

FIG 1

FIG 2

FIG 3

FIG 4

FIG 5

FIG 6

INVENTOR
KENNETH R. LARSON
BY Harry C. Albright
ATTORNEY

HARRY C. ALBRIGHT
CHICAGO
U.S. DEPT. OF PATENTS
NO. DIST. OF ILLINOIS

FIG 7

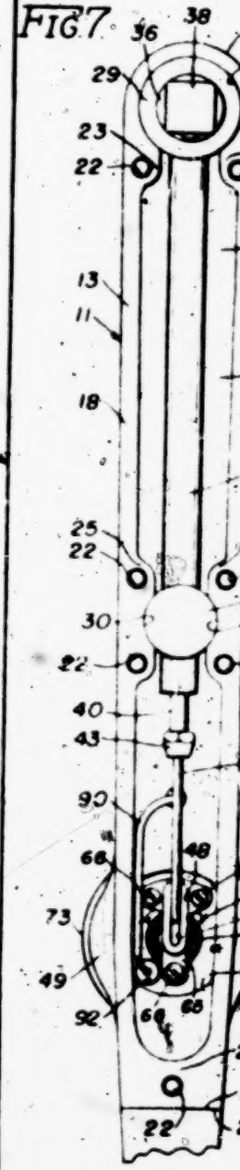
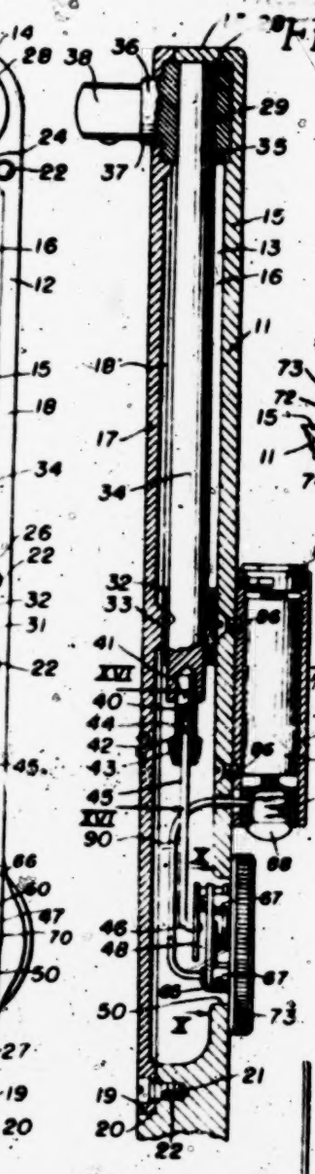


FIG 8



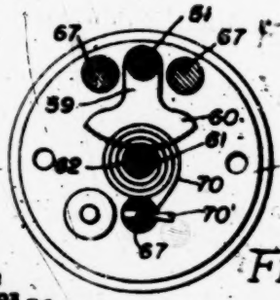


FIG 10

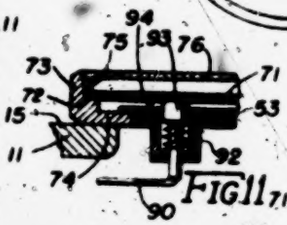


FIG 11

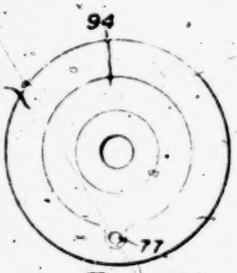


FIG 12

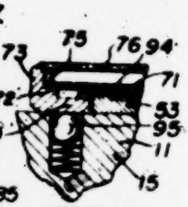


FIG 13

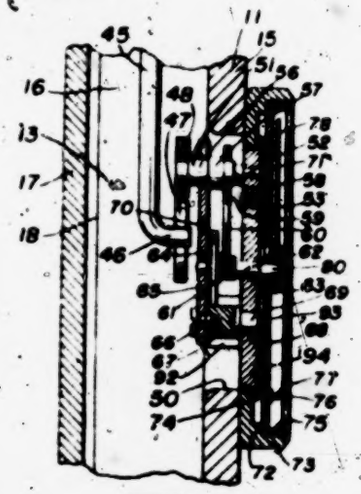


FIG 14

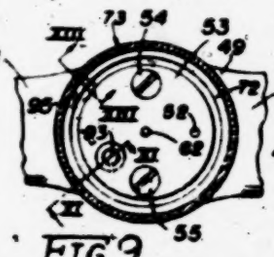


FIG 9

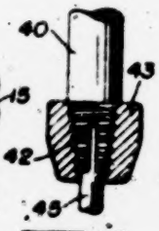


FIG 16

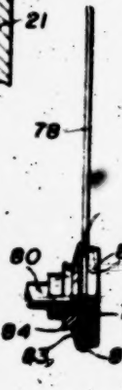
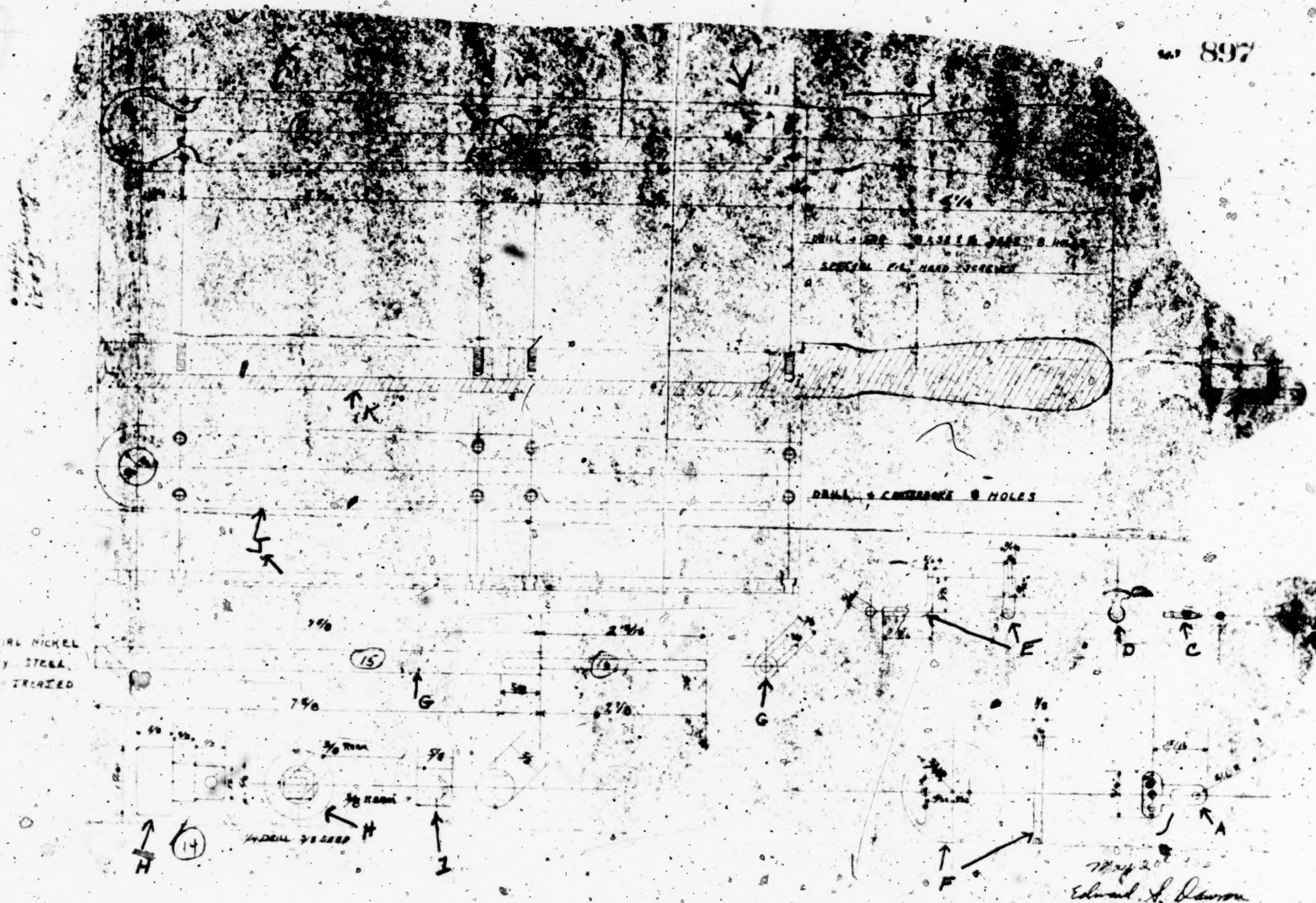


FIG 15

INVENTOR
KENNETH R. LARSON
BY Harry C. Albright
ATTORNEY

Kenneth R. Larson
Torque Wrench
File 11491 - Sheet 2



May 20

Edward L. Dawson

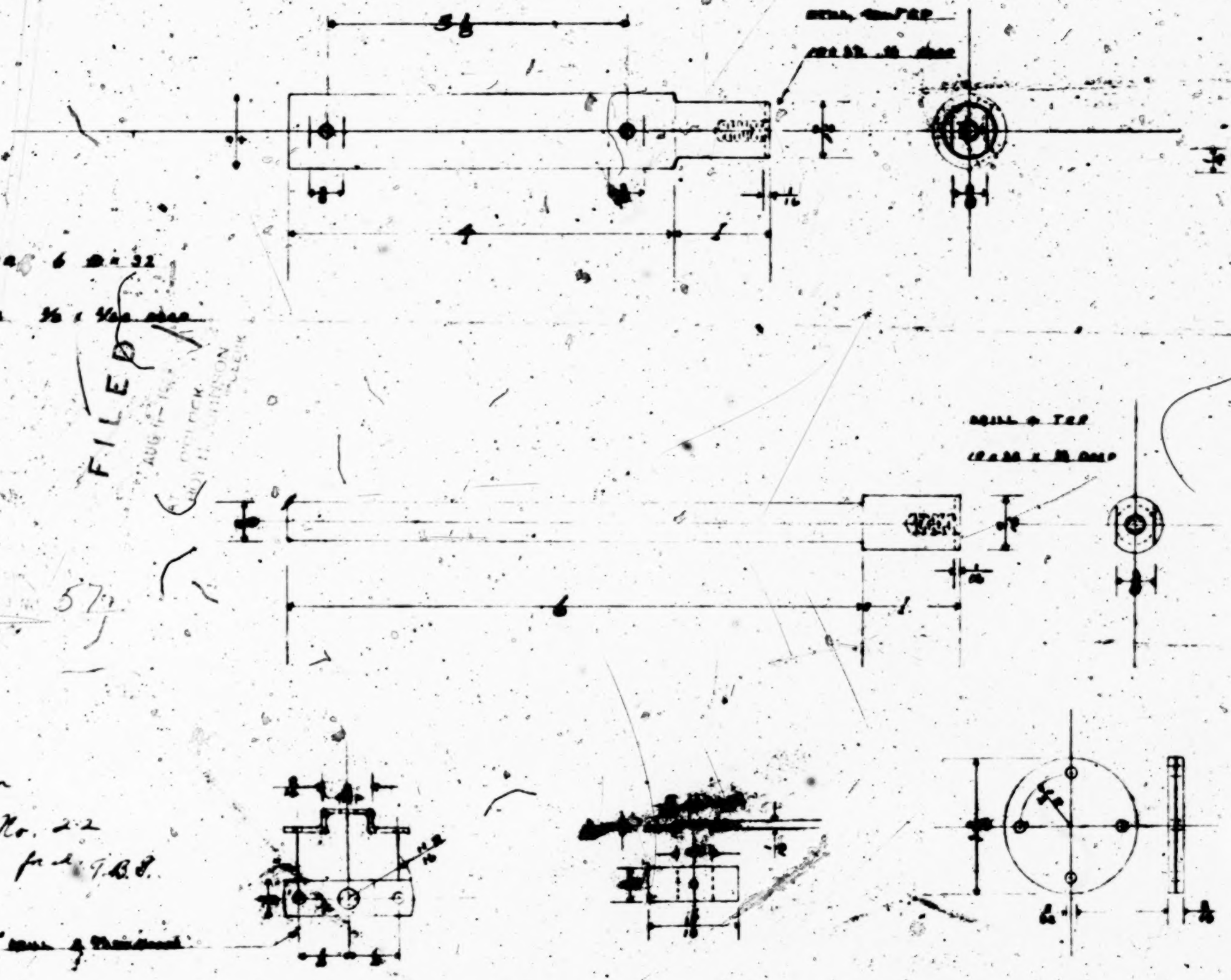
Ronald J. Ford

Witness

VS.
PRECISION INSTR. MFG. CO. ET AL
CIVIL ACTION NO. 4382
DEF. EXH. NO. 9

Interference No. 77,561
Dawson's Exhibit 97
C

Notary Public

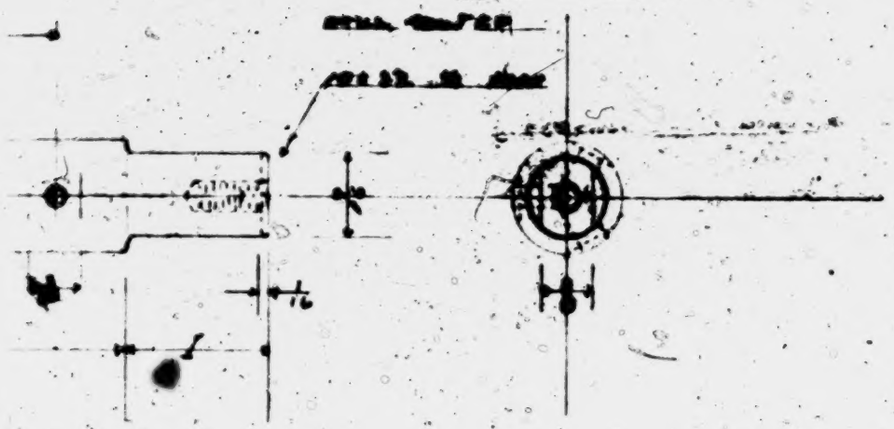


FILED

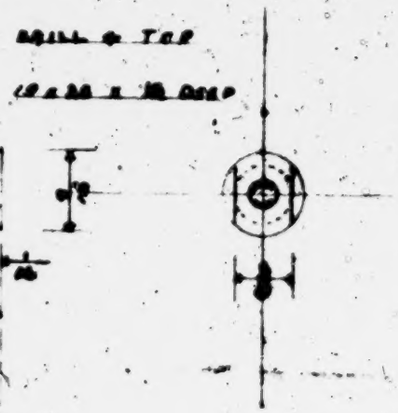
AUG 1 - 1957

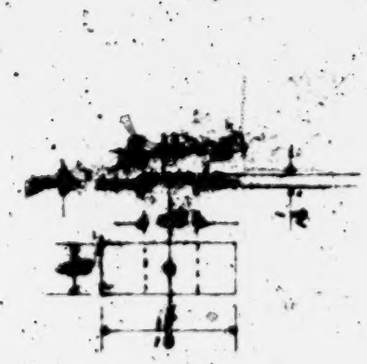
PLAINTIFF'S EXHIBIT No. 57

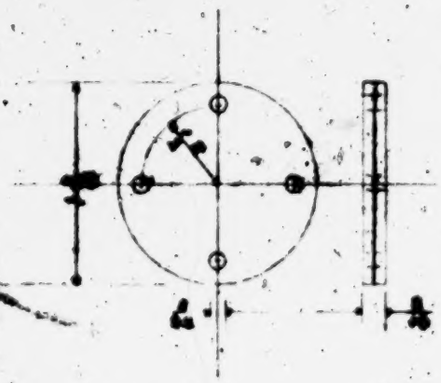
Lock-on
Sheet No. 22
for U.S.B.C.

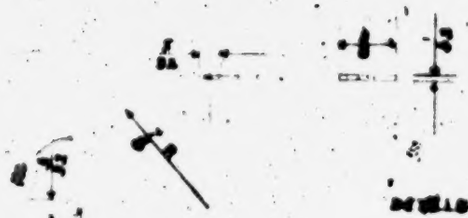


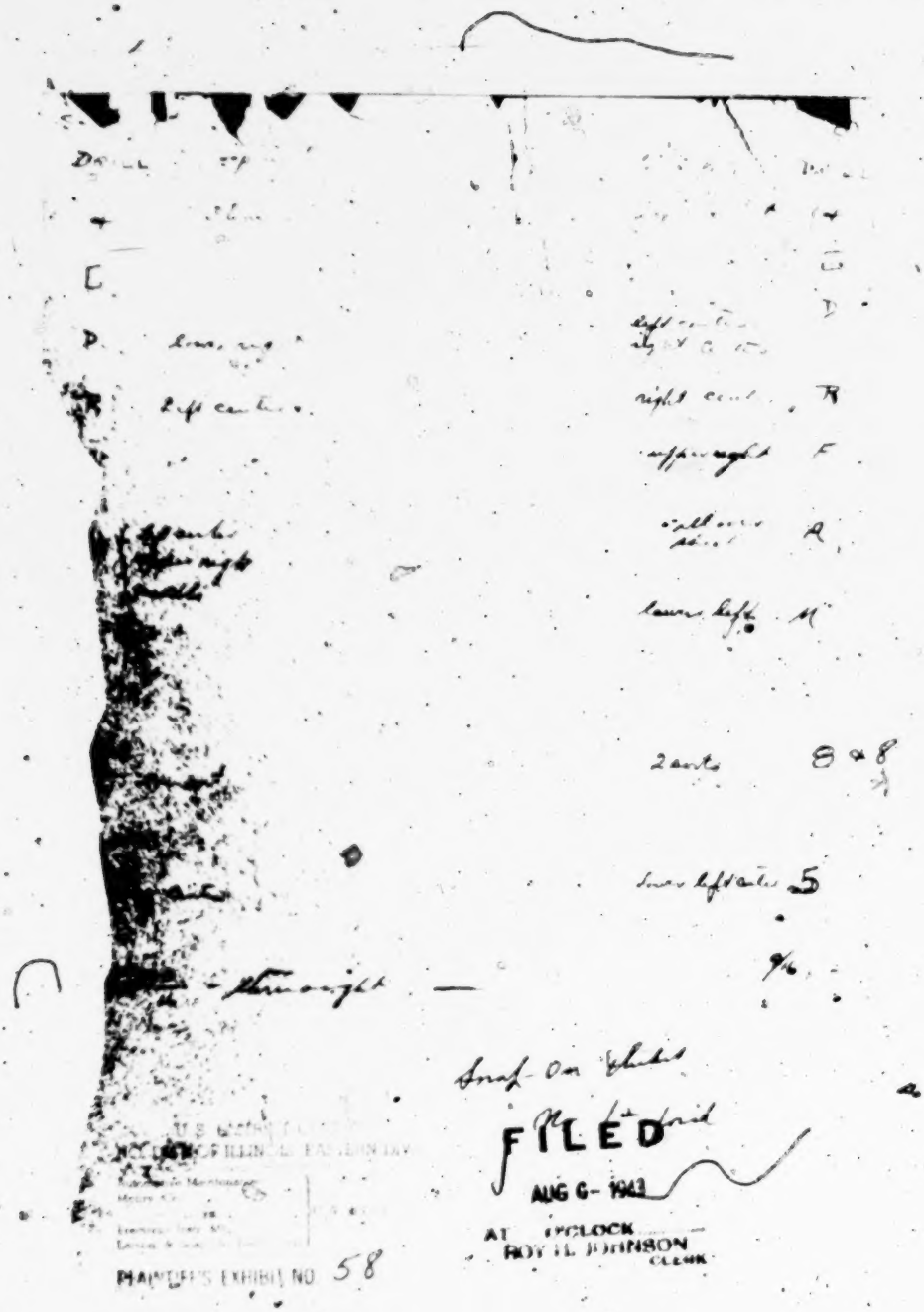












FILED
AUG 6- 1943
AT ___ O'CLOCK
ROY L. JOHNSON
CLERK

PLAINTIFF'S EXHIBIT NO. 58

1662 PLAINTIFF'S EXHIBIT NO. 59.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(In pencil:) Tentative settlement submitted by Fidler & Lindsey to Hobbs.

Minimum Terms for Total Settlement.

1. Larson and Precision give Zimmerman flat concession of priority.
2. A royalty of ten per cent (10%) of Snap-On's net selling price of wrenches to trade on wrenches heretofore sold and hereafter to be sold on orders already taken.
3. No more orders for such wrenches to be taken.
4. Acknowledgment of validity of Zimmerman patent and agreement of Precision and Snap-On not to infringe.
5. Release by Automotive of any and all other claims of every nature and kind.

Alternative Proposition.

1. Flat concession of priority to Zimmerman.
2. No release by Automotive of any kind or nature.

Time for Acceptance or Rejection of Either Proposition Expires 5:00 P. M., Thursday, December 12, 1940.

1663 PLAINTIFF'S EXHIBIT NO. 60.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co., North Chicago, Ill.)

June 3, 1940

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

Re: Larson *vs.* Zimmerman

I am pleased to note that Larson is "out" in so far as the claim directed to the gauge coupling feature of our wrench is concerned.

You state that if the interference goes forward there

will be only two claims involved. What makes you feel that the interference might not go forward?

How long do you think it will take to wind it up?

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.,

By Fred G. Wacker

Fred G. Wacker,

fgw/ms *Pres.*

1664 PLAINTIFF'S EXHIBIT NO. 61.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago.)

May 31, 1940.

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention: Mr. Frederick G. Wacker

Dear Fred:

Re: Larson *vs.* Zimmerman

As I told you the other day, the party Larson's attorney failed to make one of our claims within the time set by the Patent Office, and the Patent Office then ruled that he was not entitled to contest an interference with respect to said claim. Larson's attorney, however, came forward in an attempt to make the claim which he had previously failed to make in the face of the Patent Office ruling that he had no right to make it, and when he did that I filed a memorandum strenuously objecting to any such practice.

The Patent Office agrees with me in this matter, as you will note from the enclosed copy of the Patent Office's communication, dated May 29th, just received in connection with this matter. Therefore, if the interference goes forward, only two claims will be involved and Larson is
1665 "out", so to speak, so far as the claim directed to the gauge coupling feature of your wrench is concerned.

With kindest personal regards, I am

Very truly yours,

F:B R. E. Fidler

Enc.

1666 PLAINTIFF'S EXHIBIT NO. 61A.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Div. 36—7892 McFayden/R

Davis, Lindsey, Smith & Shonts,
1901 McCormick Building
Chicago, Illinois
May 29, 1940

Paper No. 18
Interference No. 77,565
Larson
vs.
Zimmerman

The party Zimmerman has filed a memorandum in opposition to an alleged belated presentation of an interference count by the party Larson (claim 18 of Larson).

In the decision on motion, of March 11, 1940, paper #9, the Examiner granted the admission of a count proposed by Zimmerman (as his claim 30), provided certain alterations indicated by the Examiner be made therein, and the decision went on to state, page 4:—"a period of thirty days is set from the date of this decision in which the proposed count, amended as above suggested, may be presented by the parties."

The party Zimmerman presented the claim above referred to within the thirty day period.

The party Larson presented in his application the claim 18 above referred to under date of May 17, 1940, and the failure of Larson to present the claim in the thirty days specified in the decision (paper #9) is the gravaman of Zimmerman's opposition.

On March 18, 1940 the party Larson petitioned for rehearing, which was denied by the Examiner on April 8, 1940, paper #13, and the party Larson argues that at the time of filing this petition he thought it stayed the thirty day period allowed in paper #9 for presentation of the claim.

1667 In the view of the Examiner the position taken in Zimmerman's memorandum of opposition is correct, and the party Larson by implied disclaimer, has relinquished his right to proposed claim 30 of the original motion.

It is well established as necessary for determination of interferences, that the conflicting parties must make suggested claims within the time allowed, under pain of disclaimer. The intentions of the party are not controlling.

Turning to Larson's argument concerning the petition for rehearing acting as a stay against the time limit of paper #9, the Examiner is constrained to agree with the opposing party Zimmerman. Rule 123 is quite specific and clear on the matter of effecting a stay of proceedings, and Larson's impressions to the contrary cannot prevail.

Nor does the fact that in paper #15 the Examiner, corrected an omission of paper #9 by setting a time limit in which Larson might present two additional claims, affect the above holding. The operation of disclaimer operates independently in each instance. If one claim be suggested under Rule 96 to a party, and he fails to make the claim, and later another claim be suggested to the same party for a proposed second interference; his failure to make the first claim will not estop him from making the second claim and vice versa, his making the second claim would not re-establish his right to make the first.

The party Larson is therefore held to have impliedly disclaimed the subject-matter of the original Zimmerman claim 30.

The interference will be reformed in due course as to the remaining admissible counts.

Examiner, Div. 36.

1668 PLAINTIFF'S EXHIBIT NO. 64-A.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

STIPULATION.

It is stipulated between counsel for the respective parties that Plaintiff's Exhibit No. 64 is a certified copy of the Petition, Specification, Oath and Drawings of the Larson application Serial No. 232,723, as originally filed on October 1, 1938 (which application matured into Larson patent No. 2,279,792, in suit—Plaintiff's Exhibit No. 65); that the written description of said application as filed is the same as the description of the printed patent as issued except that the words "or head" in line 34, second column, page 1 of the patent, and the words "or turning" appear-

ing in lines 20 and 21 of column 1 of page 2 of the printed patent, did not appear in the description of the application as filed; that the drawings of the application as filed and the drawings of the issued patent are the same; that the claims of said application as filed were as follows:

1669 1. In a torque wrench, the combination with a handle member, of a turning head member operatively connected to said handle member, a torque resisting beam interposed between said handle member and said turning head member, and calibrated indicating means operatively connected to an extremity of said resisting beam to measure the flex of said torque resisting beam.

2. In a torque wrench, the combination with a handle member, of a turning head member journalled in one extremity of said handle member, a torque resisting beam anchored in said turning head member, a supporting mount associated with said handle member and anchoring said beam intermediate the extremeties thereof, and torque indicating means operatively connected to the free extremity of said beam.

3. In a torque wrench, the combination with a handle member, of a turning head member journaled in one end of said handle member, a torque resisting beam anchored in said turning head member, a mount associated with said beam intermediate the extremeties thereof and journalled in said handle member, and calibrated indicating means operatively connected to the free extremity of said beam.

4. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated torque resisting rod interposed between said handle member and said turning head member, a rod mount journalled in said handle member to freely receive said rod therethrough, and calibrated indicating means operatively connected to the free extremity of said rod.

5. In a torque-wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, and torque indicating means operatively connected to the

free extremity of said rod which is displaced responsive to applying force to said handle means.

6. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod, and torque indicating means operatively connected to the free extremity of said last named rod which is displaced, responsive to applying force to said handle means.

1670 7. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount for extension along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said rod which is displaced responsive to applying force to said handle means.

8. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount for extension along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said rod which is displaced responsive to applying force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

9. In a torque wrench, the combination with a member,

of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

10. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

1671 11. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free ex-

tremity of said last named rod which is displaced responsive to applying force to said handle means.

12. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

13. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

14. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical torque resisted rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journalled in

said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod of uniform diameter projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means into said chambered handle member and cooperating with said pin connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

1672 and that Larson's Oath as filed was in the usual form, all as shown by Plaintiff's Exhibits Nos. 64 and 65.

Davis, Lindsey, Smith & Shonts,
Attorneys for Plaintiff.

August 5, 1943.

Will Freeman,
Casper W. Ooms,
Attorneys for Defendants.

August 5, 1943.

1674 PLAINTIFF'S EXHIBIT NO. 68.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

STIPULATION WITH RESPECT TO EXHIBITS.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that:

1.

A. Two volumes of deposition testimony taken in Interference No. 77,565 and comprising the original ribbon copies of the depositions of the witnesses—

Henry C. Schultz
Richard W. Barggren
Harold Blake
Ronald Ford
Landen C. Hymes (incomplete)

be marked and received in evidence as part of the record in this action as Defendants' Exhibit 10, along with the volume comprising the incomplete deposition testimony of Kenneth R. Larson given in said Interference and already offered at the trial of this action as Defendants' Exhibit 10.

B. A file of documentary exhibits which comprises certain of the documentary exhibits offered in evidence in connection with the deposition testimony in Interfer-1675 ence No. 77,565, be marked and received in evidence as part of the record in this action as Defendants' Exhibit 106. This file of documentary exhibits, identified by their interference exhibit numbers, comprises—

Larson Exhibit No. 1—Schultz sketch of casting.

Larson Exhibit No. 2—Sales invoice dated 8/24/34.

Larson Exhibit No. 3—Sales invoice dated 11/6/35.

Larson Exhibit No. 4—Sales invoice dated 5/11/36.

Larson Exhibit No. 5—Sales invoice dated 11/23/37.

Larson Exhibit No. 25—Barggren sketch of wrench.

Larson Exhibit No. 26—Ford sketch of testing equipment.

Larson Exhibit No. 29—Hymes' sketch of wrench and testing scale.

Larson Exhibit No. 30—Canceled check of Ladendorf dated June 20, 1938.

Larson Exhibit No. 34—List of officers and directors of Precision Instrument Mfg. Co.

Larson Exhibit No. 35—Larson's sketch of farm scale testing apparatus.

Larson Exhibit No. 36—Lafson's sketch of back lash beam.

Larson Exhibit No. 42—Larson's sketch of rear extension of beam of Lafson Exhibit 41.

Larson Exhibit No. 51—Snap-On letter of October 26, 1938 to Larson.

(Same as Plaintiff's Exhibit 4.).

Larson Exhibit No. 52—Preliminary agreement dated September 28, 1938 between Larson and Snap-On.

(Same as Defendants' Exhibit 61.)

Zimmerman Exhibit A—Signature of Kenneth R. Larson.

Zimmerman Exhibit B—Same as Larson Exhibit No. 52.

Zimmerman Exhibit C—Larson's sketch of early wrench.

C. The wrenches which were offered in evidence in Interference No. 77,565 as Larson Exhibits Nos. 31, the wrench purchased by Ladendorf on June 20, 1938, and 37, the wrench allegedly sold by Dawson to Blake in December, 1937, be marked and received in evidence in this action as Defendants' Exhibits 104 and 105, respectively.

D. Defendants' Exhibits 2, 7, 8, 9, 10, 61, 104, 105 and 106 and Plaintiff's Exhibit 4 comprise a portion of the deposition of testimony (the testimony of certain witnesses and portions of testimony of other witnesses 1676 not having been transcribed) and all the documentary and physical exhibits taken and introduced during the taking of proofs by the party Larson in Interference No. 77,565.

2.

The letter of Automotive Maintenance Machinery Company of February 3, 1941, addressed to Mr. Fidler and referred to in the transcript at page 629 as Defendants' Exhibit 79, may be renumbered as Defendants' Exhibit 60 and the transcript may be corrected accordingly.

3.

A certified copy of the Larson patent application Serial No. 232,723, as filed on October 1, 1938, and which issued as United States Letters Patent No. 2,279,792, be marked and received in evidence as part of the record in this action as Plaintiff's Exhibit 64.

4.

Soft printed copies of the patents in suit, namely, Larson No. 2,279,792, Zimmerman No. 2,283,888, and Zimmerman Re. 22,219, be marked as part of the record in this action as Plaintiff's Exhibits 65, 66 and 67, respectively.

5.

This stipulation may be marked and received in evidence as ~~Plaintiff's~~ Exhibit 68.,

Davis,—Lindsey, Smith & Shonts,
Counsel for Plaintiff.

June 21, 1943.

1677 Casper W. Ooms,
Counsel for Defendants—Precision Instrument Manufacturing Company and Kenneth R. Larson.

June 21, 1943.

Will Freeman,
Counsel for Defendant—Snap-On Tools Corporation.

June 25, 1943.

1679 DEFENDANTS' EXHIBIT NO. 4.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement, entered into as of the 20th day of December, 1940, by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), Precision Instrument Manufacturing Company, of Des Plaines, Illinois, an Illinois corporation (hereinafter referred to as Precision), and Kenneth R. Larson, of Des Plaines, Illinois (hereinafter referred to as Larson),

Witnesseth:

Whereas, AMMCO is the owner of the following patent applications filed in the name of Herman W. Zimmerman: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, Larson is the applicant named in application for Letters Patent, Serial No. 232,723, filed October 3, 1938, for Torque Wrench;

Whereas, an interference, No. 77,565, between said Lar-

son application, Serial No. 232,723, and said Zimmerman applications is now pending in the United States Patent Office;

Whereas, Larson, on September 28, 1938, entered into a certain agreement with Snap-On Tools Corporation, of Kenosha, Wisconsin, respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson application, Serial No. 232,723,

which contract, as represented by Larson and Pre-
1680 cision, is owned by Precision, and Precision now is, and for some time has been, manufacturing said torque wrenches and selling its entire output of the same to said Snap-On Tools Corporation for resale to the trade;

Whereas, said Larson application, Serial No. 232,723, has, prior to the date hereof, been owned by said Snap-On Tools Corporation, and said Snap-On Tools Corporation has reassigned said Larson application to said Larson and Precision;

Whereas, with respect to said interference, it has been determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference, as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties hereto are desirous of settling said interference by concession of priority from Larson to said Herman W. Zimmerman, in order that said interference may be terminated amicably and without further contestation and expense; and

Whereas, Larson is now President of Precision, and Precision and Larson, jointly and severally, are desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth:

1681 Now, Therefore, in consideration of Five Hundred Dollars ($500.00), in hand paid to AMMCO, receipt of which is hereby acknowledged, and further in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Larson shall and hereby does concede priority of invention to said Herman W. Zimmerman with respect to

the subject matter involved in said Interference No. 77,565 and all other subject matter commonly disclosed in said Zimmerman and Larson applications, and Precision, in so far as it may have any rights with respect to said Larson application, consents to said concession of priority.

2. Larson and Precision, jointly and severally, shall and hereby do assign their entire right, title and interest in and to said Larson application, Serial No. 232,723, to AMMCO.

3. Precision agrees that it will, at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and or any other torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, called for in unfilled orders from said Snap-On Tools Corpora-
1682 tion as of the date of this agreement. Said statement shall give the dates of the orders, the numbers ~~and sizes~~ of the wrenches covered by the orders, and the number of wrenches of ~~each size~~ which still remain to be delivered to fulfill the respective orders, and Precision warrants and covenants as one of the main considerations for the release specified in paragraph 6 hereof that the statement is complete and accurate and that Precision has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than said Snap-On Tools Corporation, and Precision and Larson, jointly and severally, further warrant and covenant that the total number of said wrenches to be delivered on said unfilled orders does not exceed six thousand (6000) and that in the event, due to error or for any reason, said total number exceeds said six thousand (6000), then Larson and or Precision will pay, or they will take such legal steps as are necessary to cause said Snap-On Tools Corporation to pay, to AMMCO ten per cent (10%) of said Snap-On Tools Corporation's net selling price of the wrenches in excess of six thousand (6000). Said royalties are to be paid each month for the excess wrenches shipped during the next preceding month. Precision further agrees that it will not, after the date hereof, take any further orders from said Snap-On Tools Corporation, or any other party,

for torque wrenches of the kind hereinabove identified and that, as soon as said torque wrenches now on order are completed, it will discontinue the manufacture and or sale and or use of said wrenches, and Precision further agrees that it will not thereafter, directly or indirectly, in-
1683 fringe any of the claims (now or hereafter allowed) of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, and any patents that may issue thereon. Precision further agrees that it will notify AMMCO promptly in writing when said orders on hand at the time of signing this agreement have been filled. Larson agrees to and shall be bound equally with Precision as to all of the provisions of this paragraph.

4. Precision and Larson each agree not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

5. Precision and Larson, jointly and severally, assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which they, or either of them, may now have or at any time claim to have in, to and under said Larson application, Serial No. 232,723, by virtue of said agreement dated September 28, 1938.

6. AMMCO, in consideration of the performance of all the foregoing by Precision and Larson, and each of them, does hereby release and forever discharge Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO may have against them, or either of them, prior to the
1684 date hereof, on account of said Interference No. 77,-565 and also on account of development of, dealing in and or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to said Snap-On Tools Corporation.

In Witness Whereof, the parties hereto have caused this agreement to be signed in triplicate, Larson subscribing in proper person, and AMMCO and Precision by their

officers, respectively, thereunto duly authorized and their corporate seals affixed this 23rd day of December, 1940.

Automotive Maintenance Machinery Co. (AMMCO),
By Frederick G. Wacker,
President.

Attest:
M. J. Stacey,
Secretary.

Precision Instrument Manufacturing Company (Precision),
By Kenneth R. Larson,
President.

Attest:
Walter Carlsen,
Secretary.

Kenneth R. Larson. (Seal)
Kenneth R. Larson.

State of Illinois } ss.
County of Cook }

On this 23 day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Dorothy P. Smead,
Notary Public.

My commission expires Feb., 1942

State of Illinois }
County of Cook } ss.

On this 24 day of December, 1940, personally appeared before me Kenneth R. Larson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Precision Instrument Manufacturing

Company, a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

M. K. Hobbs,
Notary Public.

State of Illinois }
County of Cook } ss.

On this 24 day of December, 1940, personally appeared before me Kenneth R. Larson, personally known to me, and by me personally known to be the person who executed the above instrument, who being duly sworn, acknowledged that he executed the above instrument as his free and voluntary act.

M. K. Hobbs,
Notary Public.

1686 DEFENDANTS' EXHIBIT NO. 5.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement, entered into as of the 20th day of December, 1940, by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), and Snap-On Tools Corporation, of Kenosha, Wisconsin, a corporation of Delaware, (hereinafter referred to as Snap-On),

Witnesseth:

Whereas, Snap-On warrants that it is the owner of an application for Letters Patent, Serial No. 232,723, filed October 1, 1938, in the name of one Kenneth R. Larson of Des Plaines, Illinois, for Torque Wrench;

Whereas, said Larson application, Serial No. 232,723, is involved in an interference, No. 77,565, now pending in the United States Patent Office with the following patent applications of Herman W. Zimmerman which AMMCO warrants that it owns: Serial No. 475,863, filed November

22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, with respect to said interference, it has been determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties hereto are desirous of settling said interference by a con-
1687 cession of priority from said Kenneth R. Larson to said Herman W. Zimmerman in order that said interference may be terminated amicably and without further contestation and expense;

Whereas, Snap-On did, on September 28, 1938, enter into a certain agreement with said Kenneth R. Larson respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson application, Serial No. 232,723, which contract is now owned by Precision Instrument Manufacturing Company, of Des Plaines, Illinois, a corporation of Illinois, as represented by said Kenneth R. Larson and said Precision Instrument Manufacturing Company, and said Precision Instrument Manufacturing Company now is and for some time has been manufacturing said torque wrenches and selling its entire output of the same to Snap-On for resale to the trade; and

Whereas, Snap-On is desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Snap-On shall and hereby does reassign its entire right, title and interest in and to said Larson application, Serial No. 232,723, to said Kenneth R. Larson and said Precision Instrument Manufacturing Company;

1688 2. Snap-On agrees that it will, at the time of signing this agreement, give to AMMCO a written statement setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and or any other

torque wrenches coming within the scope of any of the claims (now allowed) in said Zimmerman and Larson applications, or either of them, called for in unfilled orders on hand and given to said Precision Instrument Manufacturing Company or otherwise as of December 20, 1940. Said statement shall give the dates of the orders, the numbers and sizes of the wrenches covered by the orders, and the number of wrenches of each size which still remain to be delivered to fulfill the respective orders. Snap-On warrants and covenants as one of the main considerations for the release specified in paragraph 5 hereof that the statement is complete and accurate and that Snap-On has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than as specified in the statement, and Snap-On further warrants and covenants that the total number of said wrenches to be delivered on said unfilled orders does not exceed six thousand (6000) and that in the event, due to error or for any reason, said total number exceeds said six thousand (6000), then Snap-On and/or Precision will pay to Ammco ten per cent (10%) of Snap-On's net selling price of the wrenches in excess of six thousand (6000), Snap-On in any event guaranteeing payment of said royalties to Ammco. Said royalties are to be paid each month for the excess wrenches shipped during the next preceeding month. Snap-On further
1689 agrees that, as of the date of this agreement, it will not give to said Precision Instrument Manufacturing Company, or to any other party, excepting AMMCO, any order or orders for said torque wrenches of the kind hereinabove identified, and that, as soon as said wrenches on order as of the date of this agreement have been delivered to it and disposed of in fulfillment of said orders, Snap-On will thereafter discontinue the sale, distribution and use of said wrenches, and Snap-On agrees that it will not thereafter, directly or indirectly, infringe any of the claims (now or hereafter allowed) in said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, or any patent that may issue thereon. Snap-On further agrees that it will notify AMMCO promptly in writing when said orders given by it have been filled and when the wrenches supplied on said orders have been fully disposed of by Snap-On.

3. Snap-On agrees not to directly or indirectly, contest the validity of any claim or claims of any Letters Patent

that may issue upon said Zimmerman and Larson applications.

4. Snap-On shall, and hereby does, assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which it may now or at any time claim to have in, to and under said Larson application Serial No. 232,723 by virtue of said agreement dated September 26, 1936.

5. AMMCO, in consideration of the performance of all the foregoing by Snap-On, does hereby release and forever discharge Snap-On and all of its customers from any 1690 and all liability arising out of any claim or claims of any name or nature which AMMCO may have against it, prior to the date hereof, on account of said Interference No. 77,565 and also on account of development of, dealing in and or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to Snap-On or disposed of by Snap-On.

In Witness Whereof, the parties hereto have caused this agreement to be signed in duplicate by their officers, respectively, thereunto duly authorized and their corporate seals affixed this 23rd day of December, 1940.

Automotive Maintenance Machinery Co.
(AMMCO)
By Frederick G. Wacker,
President.

Attest:
M. J. Stacey,
Secretary.

Snap-On Tools Corporation (Snap-On)
By J. Johnson,
President.

Attest:
Wm. A. Seidemann,
Secretary.

State of Illinois, }
County of Cook. } ss.

On this 23 day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he 1691 is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Dorothy P. Smith,
(Seal) *Notary Public*
My commission expires Feb. 1942.

State of Wisconsin }
County of Kenosha } ss.

On this 26 day of December, 1940, personally appeared before me J. Johnson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Snap-On Tools Corporation, a corporation of Delaware and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Margaret Riordan,
(Seal) *Notary Public*

1693 DEFENDANTS' EXHIBIT NO. 11.

(Letterhead of Automotive Maintenance Machinery Co.—
North Chicago, Ill.

November 5, 1940

Davis, Lindsey, Smith & Shonts,
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

As you requested I submit a report of my recent conversations with Mr. M. C. Travis, our former superintendent, and of my meeting with him on November 1 and our meeting on the evening of November 3 at your residence, at which meeting were present you, Mr. M. C. Travis, Mr. George Thomasma, Mr. David M. Krichiver, Mr. Thomasma's attorney, and me, as follows:

During the weekend prior to November 1 or thereabouts Mr. Travis telephoned me at my residence in Lake Forest stating that he wanted to see me the next time I was in Chicago on a matter that was of interest and importance to me. I replied that I expected to be in the city the latter part of the coming week and that I would phone him later as to a definite date. I telephoned him on Thursday October 31 and arranged to meet him at the Edgewater Beach Hotel at 5:30 P. M. on Friday November 1. I told him to meet me at the entrance as the traffic would be heavy at that time of night and I probably would not be able to find a place to park. Travis met me as arranged and we drove approximately a half dozen blocks north and west and stopped at a tavern adjacent to the L.

Travis said that he had come to me at the suggestion of George Thomasma who had been at his home when he first called me and who had come to him for advice with respect to the pending Larson-Zimmerman Patent Interference situation. Travis stated that he knew both of us and would do everything he could to bring us together to straighten out any differences that existed between us in the above situation. Travis told me that Thomasma had said to him that he (Thomasma) had developed the bench that was being manufactured in Des Plaines by the Pre-

cision Instrument Mfg. Co. and that he had received stock in the Precision Instrument Mfg. Co. for turning in this development to them. Travis said that Thomasma also stated to him that Snap-On Tools, Inc. was back of 1694 Precision Instrument Mfg. Co's activities and was financing this patent litigation. He further stated that Thomasma had told him that either Larson or Carlson of the Precision Instrument Mfg. Co. was going under an assumed name. Travis said that Thomasma wanted to do the right thing and testify as to the facts but that in doing so Thomasma would destroy the value of the stock that he owned in the Precision Instrument Mfg. Co. I told Travis very definitely that our only interest was to protect our own rights and that we had no desire to proceed against Thomasma in any way unless forced to do so should Thomasma get on the stand and perjure himself. I also told Travis very emphatically that we could not legitimately and therefore would not offer any inducement whatever to Thomasma that might influence his testimony in any way, first because it was unethical, and second because if discovered it would make his testimony valueless; and further than that would seriously jeopardize our case. I further told Travis that a discussion with respect to the purchase of Thomasma's stock could not be regarded as a normal business transaction under normal conditions because it would clearly be intended for the purpose of influencing testimony and would be so construed if discovered, and that, for that reason, we could not make any promises or hold out any inducements to Thomasma that might influence his testimony in our favor either for the present or for the future.

Travis then said that he would report back to Thomasma and that he thought it would be desirable that he (Travis), Thomasma and I have a meeting and talk things over. I replied that I would discuss the matter with you, our attorney, and that I would not consider meeting Thomasma under any circumstances unless you were present.

On November 2 I telephoned you of this conversation; and on the same day I telephoned Travis and suggested that a meeting be arranged with Thomasma for Tuesday November 5 or Wednesday November 6, whatever date was acceptable to you. I suggested that the meeting be held in your office. Travis later called me back and said

that Thomasma would prefer an earlier date, either Saturday November 2 or Sunday November 3. After various telephone conversations it was finally arranged that you and I would meet Thomasma and Travis at your residence at 9532 Lawndale, Niles Center, at 8:00 o'clock P. M. on Sunday November 3.

1695

As you know, I arrived at your residence at 8:00 o'clock. A little later Thomasma arrived with his attorney Mr. Krichiver, and about 8:30 o'clock Travis arrived. You will recall the conversation that took place.

Travis started out by saying that he wanted to see Thomasma and me get together because he felt friendly toward both of us. Mr. Krichiver and Thomasma stated that Larson's patent application was a frame-up and that the Snap-On Tools, Inc. was back of the whole thing, that Thomasma had developed the wrench and that he had turned the wrench in to Precision Instrument Mfg. Co. in consideration for which he received stock in the Precision Instrument Mfg. Co. Thomasma made the statement that Mr. Carlson of the Precision Instrument Mfg. Co. was going under an assumed name. He also stated that he had developed this tool in his basement and that Larson saw it there for the first time. You and I both stated definitely that we knew the facts in the case and stated them as we knew them to be. Thomasma, Krichiver and Travis did not argue the facts as we stated them but on the contrary acquiesced and agreed.

Mr. Krichiver then explained that if Thomasma got up on the witness stand and testified in accordance with the facts that he would thereby destroy the value of his stock in the Precision Instrument Mfg. Co. and that he therefore thought that we should arrange to purchase Thomasma's stock at a price to be agreed upon. You and I both flatly refused to consider any such proposition and we flatly refused to offer any inducements to Thomasma either for the present or for the future that might in the slightest degree tend to influence Thomasma's testimony, first because it was unethical and second because it would render Thomasma's testimony valueless should such an arrangement be discovered and would further damage our own case irreparably in that event. I then stated that I would unquestionably be cross examined on the witness stand and would unquestionably be asked the direct ques-

tion as to whether or not we had in any way done
1696 anything to influence Thomasma's testimony by offering any inducements or making any promises to Thomasma either for the present or for the future and that I would under no circumstances place myself in the position of either making damaging admissions or perjuring myself to avoid making them.

You then stated emphatically and vehemently that your firm of Davis, Lindsey, Smith & Shonts was an ethical and honorable firm and that if you became a party to any such arrangement that your partners would kick you out of the firm.

You and I both explained to them that this was not a situation involving normal negotiations for the purchase of stock under normal conditions because the purchase of Thomasma's stock could only be construed as a financial consideration to influence the testimony of Thomasma in our favor; and we explained in detail over and over again why we could not and would not even consider discussing the purchase of Thomasma's stock in the Precision Instrument Mfg. Co.

Shortly thereafter Mr. Krichiver said that he was late for an appointment and he and Thomasma left together.

As you remember Travis and I remained and continued the discussion for half to three-quarters of an hour. Travis said that Mrs. Thomasma was at his home with Mrs. Travis waiting for Thomasma and that he would probably see him later. Travis said that he felt Thomasma wanted to do the right thing and that he (Travis) would advise him to do so. Travis then left your house and I left shortly afterwards, somewhere around 11:00 o'clock P. M.

I then drove home to Lake Forest and as I remember it some time between 1:00 o'clock and 2:00 o'clock A. M. on the morning of November 4 (the same night) Travis called me on the telephone and told me that he had had a talk with Thomasma who had waited for him at Travis' home; and that Thomasma had assured him that if called upon he would get on the witness stand and testify accurately
and honestly as to the facts in this case.
1697 I telephoned you to this effect at your office the following morning.

I believe I have briefly but completely summarized the subjects discussed; but would appreciate hearing from

you if according to your recollection I have omitted anything of importance.

With kindest personal regards,

Very truly yours,

Automotive Maintenance Machinery Co.

By Fred G. Wacker

Fred G. Wacker

fgw/ms *Pres.*

1699 DEFENDANTS' EXHIBIT NO. 13.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

August 12, 1940.

Larson employed by Auto Parts Machine Company of Des Plaines (now Auto Parts Company of Des Plaines), 1586 Minor Street, from 1928 to June 1, 1936. From 1933 to 1936 his position was that of manager.

In June, 1936, Larson and Jack E. Kamppinen started the K and L Motor Rebuilders at 62[illegible] and continued until 1938, at which time Precision was started. In 1936 Larson lived at 1455 Campbell Avenue (—Des Plaines, I presume), and when he started Precision he left and still lives at 1206 Center Street.

Kamppinen now lives at 5606 West Leland Avenue, Chicago.

Walter Carlson is the principal source of money behind Precision. He is not active in the factory. He operates a beauty parlor with his wife at 660 Pearson Street.

Eight or more prominent businessmen of Des Plaines have capital invested in Precision Instrument Company.

1700 September 3, 1940.

When Precision was started Larson and Carlson looked for others to invest in the company and they sold stock to a Dr. Purves and a Gus Staellmack (or Stellmack), president of the Northwest Beverage Company, Staellmack and Purves own 400 shares. Carlson, Larson and Thomasa own 600 shares.

Staellmack told Ed. Schulz that Larson and Thomasa were on the outs with each other because Thomasa had invented the wrench and Larson was now trying to freeze

him out. Thomasa has a key to the Precision plant and goes there occasionally in the evenings, but he does not work there anymore. At the time Precision started making tools they had a contract with Snap-On to sell the entire output to Snap-On. The patent application was assigned to Snap-On so that Snap-On would pay the expenses of obtaining the patent, Precision setting aside a fund on each tool to cover royalty costs if they do not secure the patent. The Precision tool is made entirely at the Precision factory, except the casting. Precision buys its steel from Allegheny-Ludlam Steel Company at 47th and Ledzie Avenue, Chicago. They get the brass dial from the Witzi Company. They are attaching a light to some of the tools but they are on special orders.

They made a few tools with a ratchet but they weren't so successful.

1701 September 9, 1940.

Besides Larson, Carlson and Thomasa, there are seven stockholders, namely, Dr. S. Purves, Gus Stellmack, Mrs. Ryan, Pat Maloney, Lee Barcroft and a Mr. Kappizloa. Stellmack says that Precision, on July 31, 1940, held a stockholders' meeting and, in this meeting, Thomasa, who was present, was the cause of strife. Larson and Carlson wanted to get rid of him as a director but they couldn't do so because of the backing which the small stockholders gave him. The stockholders insisted that Larson make a place for Thomasa in the organization but Larson and Carlson said no because that might have some bearing regarding the patent application since Thomasa was formerly employed by Ammco. The stockholders finally decided that Larson and Carlson were right, and Thomasa is no longer working for Precision.

The contract with Snap-On is for an indefinite length of time and is dependent upon how well Snap-On keep up with their part of the distribution. Stellmack said that Thomasa did his experimental work in a factory in Woodstock operated by a Walter Dutton, Thomasa's purpose being to keep his activities away from everyone.

Thomasa started to work for Automotive in 1923. He made suggestions at various times with respect to tools to be made by Ammco, but each time he was given rea-
1702 sons why they were not practical, with the result that nothing was done with them. Someone usually came

out, though, in a short time with the same thing. After this had happened several times he decided to keep his ideas to himself, and two or three years ago he had an idea about a pressure wrench and decided to use his basement to develop the idea. Automotive was working on a similar wrench at the time but his idea was way ahead of theirs. About that time, Larson, who was his friend then, was having difficulties and his auto supply business was nearly on the rocks. He was looking around for something to do. He happened to go to Thomasa's house one night and he asked Thomasa what he was doing. Thomasa showed him the wrench and Larson asked him if they couldn't work it out together. They decided to do so. That was about two years ago, or in the fall of 1938. Then came the problem of distribution. Larson didn't have any money. He wanted Thomasa to put up the money. Thomasa suggested a corporation. Larson was against it because then he would have to keep books that people would look at. After trying two or three distribution ideas, they got an audience with Snap-On through Carlson, who had a relative there. Snap-On agreed to distribute if they could have exclusive rights. Precision agreed to give them exclusive rights and the contract was drawn up. Then came the problem of getting money to manufacture. That is when they contacted Carlson, and Carlson and Thomasa sold Larson on the corporation idea by selling capital stock to get enough money to start the business.

Larson and Carlson then got "chummy" and, for some reason or another, turned against Thomasa, doing everything possible to get rid of him.

1704 September 17, 1940.

A Mrs. Ryan owns 35 shares of stock in Precision. Until recently she owned 40 shares but was induced by Thomasa to sell five shares to David M. Krichiver, 139 South Clark Street. Thomasa told Mrs. Ryan that he was being crowded by Larson and Carlson for control of the company and, by getting Krichiver into the company, he would have legal aid in the company.

Mr. and Mrs. Thomasa both told Mrs. Ryan that the Precision wrench was originated in the basement of the Thomasa home at 1101 Potter Road, Park Ridge, Illinois, and that it was invented by Thomasa.

1705 September 30, 1940.

Larson formerly employed by Auto Parts Machine Company of Des Plaines for about eight years, or until about June 1, 1936.

Walter Wittson was manager and owner of that company.

Wittson never heard of the Precision wrench until 1938, or more than two years after Larson left the Auto Parts Company.

Bradley and Fritz Anderson were fellow employees of Larson's at the Auto Parts Company and they never heard of the wrench either.

Larson transferred from the Des Plaines shop to the Evanston shop about the middle of May, 1936. He was transferred because of his overbearing nature. After coming there, he induced Jack P. Kamppenin, another employee of the same company, to start a competitive concern in Des Plaines known as the K and L Motor Rebuilders.

In November, 1939, he sold his interest to a Mr. Wolf.

Although Kamppenin was Larson's partner he knew nothing of the Precision wrench until late in 1938 when Larson and Thomasa started working on the wrench during the evenings in Larson's or Thomasa's basement.

Kamppenin had little to do with the wrench but knows that Larson and Thomasa did not start any work on it until 1938, and he feels that it was because of Larson's work on the wrench that the K and L Motor Rebuilders nearly went broke.

Kamppenin and Larson are not friendly now.

1706 Although Larson and Kamppenin were very close friends while working for Auto Parts Company in Des Plaines, and even though they pooled their resources and brains and ability in an attempt to make outside money, Larson never once mentioned the wrench to Kamppenin prior to 1938.

Larson and Kamppenin needed something very badly to manufacture and to help them get back in condition to make some money but, notwithstanding all this, Larson never mentioned anything about the wrench. Naturally, if he had known of the wrench at that time he would have brought it forward as an answer to their problem.

1707 One George B. Thomasa, or Thomasma, was for many years employed by Automotive Maintenance

Machinery Co., of North Chicago, Illinois (formerly of Chicago). He worked for Automotive for several years, up until the Spring of 1939, when he was discharged. During the time that he was with Automotive, Automotive was engaged in extensive development work with respect to torque measuring wrenches and, as a result of such developments, a wrench of the type shown by the attached circular was manufactured and sold on a production basis. One of Automotive's customers was the Snap-On Tools Corporation of Kenosha, Wisconsin.

In supplying such tools to Snap-On, service problems arose and, at times, Thomasa was sent to Kenosha to take care of the service work.

On or about December 6, 1938, and while Thomasa was still working for Automotive, the Precision Instrument Manufacturing Company, of 1206 Center Street, Des Plaines, Illinois, was incorporated. The incorporators were Kenneth R. Larson, George B. Thomasa, and Walter Carlsen (or Carlson). This company was incorporated for the purpose of manufacturing and selling tension or torque measuring wrenches under a certain pending U. S. patent application Serial No. 232,723.

According to a commercial report, the company manufactures a wrench of the above type and it sells its entire output to a Kenosha, Wisconsin concern, which apparently is Snap-On. According to the financial report, the company was located in September, 1939 at 1846 Miner Street, Des Plaines, Illinois.

Thomasa, as has been noted, was one of the incorporators of the Precision Company while he was still employed by Automotive, and this was true even though the main purpose of incorporating this company was to manufacture a torque measuring wrench. It is also significant that the wrench that the company was incorporated to make is substantially the same as the wrench that Automotive was making while Thomasa was employed there and which Automotive was making at the time the Precision Company was organized.

It is also significant that the application referred to in the incorporation papers was filed October 1, 1938, or shortly before the incorporation of the Precision Company; and that the United States Patent Office has caused the institution of a proceeding to determine whether Larson or Automotive's inventor (Zimmerman) is the prior

inventor of this form of wrench. In that proceeding in the Patent Office, the parties are required to state their dates of invention. The dates alleged by Larson are approximately three years earlier than the dates alleged by Zimmerman.

The attorney representing the Precision Company and Larson in the Patent Office proceeding is Mr. Harry C. Alberts, 38 South Dearborn Street, Chicago, Illinois. 1709 . It is significant that the Larson application was assigned to the Snap-On Tools Corporation, above referred to, on October 1, 1938, prior to the incorporation of the Precision Company.

It may be that the Snap-On Tools Corporation has granted a license to Precision.

There is some information to the effect that Thomasa and Larson have both lived in Des Plaines for some time and that they have been friendly and worked together for quite some times in connection with various matters. In fact, it is believed that Thomasa made it a practice to take tools from Automotive's plant and do work with the same in company with Larson at Des Plaines. There is no positive confirmation of this but there is every reason to believe that they were together very frequently through all the time that Automotive was developing its torque wrench.

Thomasa had every chance of gaining full and complete information respecting Automotive's developments because he was directly engaged therein; and, having that knowledge, he was in position to convey it to Larson.

Larson is claiming that he conceived his wrench idea about July 15, 1934 in connection with the making of a pattern for a wrench; that a wrench was built and tested in September, 1934, more than four years before he filed his application. The construction of this wrench in 1934 is not known, but it may have been quite different from the wrench of his application. Also, it may be that the wrench of 1934 was not successful and that it was dropped or abandoned and was not revived until after Automotive's activity later on in 1937. The facts in this respect will, of course, determine the question. Larson may also have a question of diligence confronting him. It may be necessary for him to show that he was actively engaged in work upon this type of wrench back in the early part of 1937 and thereafter until the latter

part of 1937. In other words, the facts surrounding his work from about July, 1934 until October, 1938 are important.

Upon inquiry in November, 1939, Larson informed a party over the telephone that Thomasa was then in the employ of Precision and that he had been in Precision's employ since December, 1938.

1711 DEFENDANTS' EXHIBIT NO. 14.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

AGREEMENT.

This agreement by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), Precision Instrument Manufacturing Company, of Des Plaines, Illinois, a corporation of Illinois (hereinafter referred to as Precision), Snap-On Tools Corporation, of Kenosha, Wisconsin, a corporation of Wisconsin (hereinafter referred to as Snap-On), and Kenneth R. Larson, of Des Plaines, Illinois (hereinafter referred to as Larson),—

Witnesseth:

Whereas, AMMCO is the owner of the following patent applications filed in the name of Herman W. Zimmerman: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, Snap-On is the owner of the following patent applications filed in the name of Larson: Serial No. 232,723, filed October 1, 1938, for Torque Wrench, and Serial No. filed ; for Torque Wrench;

Whereas, Larson, on September 28, 1938, entered into a certain agreement with Snap-On respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson applications,
1712 which contract is now owned by Precision, and Precision now is, and for some time has been, manufacturing said torque wrenches and selling its entire output of the same to Snap-On for resale to the trade;

Whereas, an interference, No. 77,565, between said Lar-

son application No. 232,723 and said Zimmerman applications; is now pending in the United States Patent Office;

Whereas, it has been determined by the parties hereto and their respective counsel that the party Zimmerman is the prior inventor of the subject matter involved in said Interference No. 77,565, as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications; and

Whereas, all parties hereto are desirous of settling the said interference amicably and without further needless contestation and expense;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Larson shall and hereby does concede priority of invention to Zimmerman with respect to the subject matter involved in said Interference No. 77,565 and all other subjects matter commonly disclosed in said Zimmerman and Larson applications.

2. Snap-On shall and hereby does assign its entire right, title and interest in and to said Larson applications, Serial No. 232,723 and Serial No. to AMMCO.

1713 3. Precision agrees that it will, at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of wrenches of design similar to the wrenches disclosed in said Larson applications on order from Snap-On or any other party at the time of signing this agreement, Precision further agrees that it will not, after the signing of this agreement, take any further orders from Snap-On or any other party for said torque wrenches or any other torques wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and that, as soon as said wrenches now on order are completed, it will discontinue the manufacture and or sale and or use of said wrenches, and it agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson and Zimmerman applications, or either of them, and any patents that may issue thereon. Precision further agrees that it will notify AMMCO promptly in writing when said orders for said wrenches have been filled.

4. Snap-On agrees that it will, at the time of signing this agreement give to AMMCO a written statement (un-

der oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, call for unfilled orders given to Precision, or any other party, as of that time. Snap-On further agrees that, after the signing of this agreement, it will not give to Precision or any other party any order or
1714 orders for said wrenches, or any other wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and that, as soon as said wrenches on order at the time of signing this agreement have been delivered to it, Snap-On will thereafter discontinue the sale, distribution and use of said wrenches, and Snap-On agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson and Zimmerman applications, or either of them, or any patent that may issue thereon. Snap-On further agrees that it will notify AMMCO promptly in writing when said orders have been filled by Precision and when said wrenches still to be delivered to Snap-On by Precision have been fully disposed of by Snap-On.

5. Snap-On, Precision and Larson each agree not to directly or indirectly contest the validity of any claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

6. Snap-On and Precision, each on its own behalf, hereby assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which they or either of them may now or at any time claim to have in, to and under said Larson applications, or either of them, by virtue of said agreement of September 28, 1938, or any other agreement dealing with said torque wrenches and which may have been entered into between Precision, Larson and or Snap-On.

1715 7. Snap-On and or Precision agrees to turn over to AMMCO upon execution of this agreement such monies as remain in a certain "defense fund" (built up by agreement or understanding between Snap-On, Precision and or Larson) after deducting from such fund all necessary and legitimate expenses which have heretofore properly accrued as against said fund.

8. AMMCO, in consideration of the performance of all the foregoing by Snap-On, Precision and Larson, and each of them, does hereby release and forever discharge Snap-

On and Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO has or may have had against them, jointly and severally, prior to the date hereof, on account of said Interference No. 77,565 and also on account of development of, dealing in, manufacture, use and/or sale of torque measuring wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in Paragraphs 3 and 4 hereof and not yet delivered to Snap-On or disposed of by Snap-On.

1716 In Witness Whereof, the parties hereto have, this _____ day of _____, 1940, caused this agreement to be signed in quadruplicate, Larson subscribing in proper person and AMMCO, Snap-On and Precision by their officers, respectively, duly authorized in the premises.

Automotive Maintenance Machinery Co.

By _____

President

Attest:

_____

Secretary

Precision Instrument Manufacturing Company

By _____

President

Attest

_____

Secretary

Snap-On Tools Corporation

By _____

President

Attest:

_____

Secretary

Kenneth R. Larson

State of Illinois }
County of } ss.

On this day of , 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of Illinois }
County of } ss.

On this day of , 1940, personally appeared before me Kenneth R. Larson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Precision Instrument Manufacturing Company, a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of }
County of } ss.

On this day of , 1940, personally appeared before me , to me personally known, who, being by me duly sworn, deposed and said that he is the President of Shap-On Tools Corporation, a corporation of Wisconsin, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and

voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

1718 State of Illinois } ss.
County of }

On this day of , 1940, personally appeared before me Kenneth R. Larson, personally known to me, and by me personally known to be the person who executed the above instrument, who being duly sworn, acknowledged that he executed the above instrument as his free and voluntary act.

Notary Public.

1719 DEFENDANTS' EXHIBIT NO. 15.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), and Snap-On Tools Corporation, of Kenosha, Wisconsin, a corporation of Wisconsin (hereinafter referred to as Snap-On),—

Witnesseth:

Whereas, Snap-On warrants that it is the owner of the following patent applications filed in the name of one Kenneth R. Larson of Des Plaines, Illinois: Serial No. 232,723, filed October 1, 1938, for Torque Wrench, and Serial No. , filed , for Torque Wrench;

Whereas, said Larson application, Serial No. 232,723, is involved in an interference, No. 77,565, now pending in the United States Patent Office with the following patent applications of Herman W. Zimmerman which AMMCO warrants that it owns: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, with respect to said interference, it has been

determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties hereto are desirous of settling said interference by a
1720 concession of priority from said Kenneth R. Larson to said Herman W. Zimmerman in order that said interference may be terminated amicably and without further contestation and expense;

Whereas, Snap-On did, on September 28, 1938, enter into a certain agreement with said Kenneth R. Larson respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson application, Serial No. 232,723, which contract is now owned by Precision Instrument Manufacturing Company, of Des Plaines, Illinois, a corporation of Illinois, as represented by said Kenneth R. Larson and said Precision Instrument Manufacturing Company, and said Precision Instrument Manufacturing Company now is and for some time has been manufacturing said torque wrenches and selling its entire output of the same to Snap-On for resale to the trade; and

Whereas, Snap-On is desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Snap-On shall and hereby does assign its entire right, title and interest in and to said Larson applications, Serial No. 232,723 and Serial No. , to AMMCO.
1721 2. Snap-On agrees that it will, at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and or any other torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, called for in unfilled orders given to said Precision

Instrument Manufacturing Company as of that time. Said statement shall give the dates of the orders, the numbers and sizes of the wrenches covered by the orders, and the number of wrenches of each size which still remain to be delivered to fulfill the respective orders, and Snap-On warrants and covenants as one of the main considerations for the release specified in paragraph 7 hereof that the statement is complete and accurate and that Snap-On has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than as specified in the statement. Snap-On further agrees that, after the signing of this agreement, it will not give to said Precision Instrument Manufacturing Company, or to any other party, excepting AMMCO, any order or orders for said torque wrenches of the kind hereinabove identified, and that, as soon as said wrenches on order at the time of signing this agreement have been delivered to it and disposed of in fulfillment of said orders, Snap-On will thereafter discontinue the sale, distribution and use of said wrenches, and Snap-On agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, or any patent that may issue thereon. Snap-On further agrees that it will notify AMMCO promptly in writing when said orders given by it have been filled and when the wrenches supplied on said orders have been fully disposed of by Snap-On.

3. Snap-On agrees not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

4. Snap-On shall, and hereby does, assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which it may now or at any time claim to have in, to and under said Larson applications, or either of them, subject only to the provisions of paragraph 6 hereof.

5. Snap-On agrees to turn over to AMMCO, upon execution of this agreement, such monies as remain in a certain "defense fund" (built up by agreement or understanding between Snap-On, said Precision Instrument Manufacturing Company and/or Kenenth R. Larson) after deducting from such "fund" all necessary and legitimate expenses which have heretofore properly accrued as against said

"fund", it being mutually understood and agreed that, if at anytime within two years after the signing of this agreement, any additional expenses of a nature that would be legitimately deductible from said "fund", if it then existed, shall accrue against Snap-On on account of any claim made by any party other than said Precision Instru-
ment Manufacturing Company and or Kenneth R.
1723 Larson and be legally determined against, AMMCO shall reimburse Snap-On for said additional expenses, but in no event shall AMMCO reimburse Snap-On in an amount exceeding the amount of said "fund" turned over to AMMCO hereunder. Snap-On agrees that, if any claim is made against it hereafter that might incur any said additional expense, it will promptly give AMMCO written notice of the same, and AMMCO shall have the right to be represented by counsel in all negotiations or proceedings of any kind that may involve any said claim and additional expense.

6. AMMCO shall, and hereby does, grant to Snap-On a fully paid non-divisible and non-exclusive license to manufacture, use and sell the gauge mechanism of said Larson application, Serial No. , it being distinctly understood that this license is limited to said gauge mechanism and that no rights are hereby given with respect to the manufacture, use and or sale of any form of wrench with which said gauge mechanism may be employed, and that this license is not transferable by Snap-On except in connection with and as a part of the sale of the entire torque wrench business (and good will thereof) of Snap-On.

7. AMMCO, in consideration of the performance of all the foregoing by Snap-On, does hereby release and forever discharge Snap-On and all of its customers from any and all liability arising out of any claim or claims of any name or nature which AMMCO may have against it, prior to the date hereof, on account of said Interference No.
1724 77,565 and also on account of development of, dealing in and or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to Snap-On or disposed of by Snap-On.

In Witness Whereof, the parties hereto have caused this agreement to be signed in duplicate by their officers, re-

spectively, thereunto duly authorized and their corporate seals affixed this ..... day of December, 1940.

Automotive Maintenance Machinery Co. (Ammeo),

By .....

Attest: *President.*

..... *Secretary.*

Snap-On Tools Corporation, (Snap-On),

By .....

Attest: *President.*

..... *Secretary.*

State of Illinois }
County of } ss.

On this day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

1725

..... *Notary Public.*

State of Illino }
County of } ss.

On this day of December, 1940, personally appeared before me ....., to me personally known, who, being by me duly sworn, deposed and said that he is the President of Snap-On Tools Corporation, a corporation of Wisconsin, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

..... *Notary Public.*

1726 DEFENDANTS' EXHIBIT NO. 16.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), Precision Instrument Manufacturing Company, of Des Plaines, Illinois, an Illinois corporation (hereinafter referred to as Precision) and Kenneth R. Larson, of Des Plaines, Illinois (hereinafter referred to as Larson),

Witnesseth:

Whereas, AMMCO is the owner of the following patent applications filed in the name of Herman W. Zimmerman: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, Larson is the applicant named in the following patent applications owned by Snap-On Tools Corporation, of Kenosha, Wisconsin: Serial No. 232,723, filed October 1, 1938, for Torque Wrench, and Serial No. _____ filed _____, for Torque Wrench;

Whereas, an interference, No. 77,565, between said Larson application, Serial No. 232,723, and said Zimmerman applications is now pending in the United States Patent Office;

Whereas, Larson, on September 28, 1938, entered into a certain agreement with said Snap-On Tools Corporation respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in
1727 said Larson application, Serial No. 232,723, which contract, as represented by Larson and Precision, is now owned by Precision, and Precision now is, and for some time has been, manufacturing said torque wrenches and selling its entire output of the same to said Snap-On Tools Corporation for resale to the trade;

Whereas, with respect to said interference, it has been determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference, as well

as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties hereto are desirous of settling said interference by concession of priority from Larson to said Herman W. Zimmerman in order that said interference may be terminated amicably and without further contestation and expense; and

Whereas, Larson is now President of Precision, and Precision and Larson, jointly and severally, are desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1728 1. Larson shall and hereby does concede priority of invention to said Herman W. Zimmerman with respect to the subject matter involved in said Interference No. [illegible] and all other subject matter commonly disclosed in said Zimmerman and Larson applications, and Precision, in so far as it may have any rights with respect to said Larson applications, consents to said concession of priority.

2. Precision agrees that it will at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and or any other torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, called for in unfilled orders from said Snap-On Tools Corporation as of that time. Said statement shall give the dates of the orders, the numbers and sizes of the wrenches covered by the orders, and the number of wrenches of each size which still remain to be delivered to fulfill the respective orders, and Precision warrants and covenants as one of the main considerations for the release specified in paragraph 7 hereof that the statement is complete and accurate and that Precision has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than said Snap-On Tools Corporation. Precision further agrees that it will not, after the signing

of this agreement, take any further orders from said
1729 Snap-On Tools Corporation, or any other party, for torque wrenches of the kind hereinabove identified and that, as soon as said torque wrenches now on order are completed, it will discontinue the manufacture and/or sale and/or use of said wrenches, and Precision further agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, and any patents that may issue thereon. Precision further agrees that it will notify AMMCO promptly in writing when said orders on hand at the time of signing this agreement have been filled. Larson agrees to and shall be bound equally with Precision as to all of the provisions of this paragraph.

3. Precision and Larson each agrees not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

4. Precision and Larson, jointly and severally, assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which they, or either of them, may now have or at any time claim to have in, to and under said Larson applications, or either of them, subject only to the provisions of paragraph 6 hereof.

5. Precision and Larson, jointly and severally, agree that said Snap-On Tools Corporation shall turn over to AMMCO, upon execution of this agreement, such
1730 monies as remain in a certain "defense fund" (built up by agreement or understanding between said Snap-On Tools Corporation, Precision and/or Larson) after deducting from such "fund" all necessary and legitimate expenses which have heretofore properly accrued as against said "fund". Precision and Larson, jointly and severally, agree to take every legal step deemed necessary by AMMCO and said Snap-On Tools Corporation to effect said turn over of said "fund".

6. AMMCO shall, and hereby does, grant to Precision a fully paid, non-divisible and non-exclusive license to manufacture, use and sell the gauge mechanism of said Larson application, Serial No. , it being distinctly understood that this license is limited to said gauge mechanism and that no rights are hereby given with respect to the manufacture, use and/or sale of any form of wrench

with which said gauge mechanism may be employed, and that this license is not transferable by Precision except in connection with and as a part of the sale of the entire torque wrench business (and good will thereof) of Precision.

7. AMMCO, in consideration of the performance of all the foregoing by Precision and Larson, and each of them, does hereby release and forever discharge Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO may have against them, or either of them, prior to the date hereof,
on account of said Interference No. 77,565 and also
1731 on account of development of, dealing in and/or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to said Snap-On Tools Corporation.

In Witness Whereof, the parties hereto have caused this agreement to be signed in triplicate, Larson subscribing in proper person, and AMMCO and Precision by their officers, respectively, thereunto duly authorized and their corporate seals affixed this ..... day of December, 1940.

Automobile Maintenance Machinery Co. (AMMCO),

By .....
President.

Attest:

.....
Secretary.

Precision Instrument Manufacturing Company (Precision),

By .....
President.

Attest:

.....
Secretary.

.....
Kenneth R. Larson.

1732 State of Illinois }
County of } ss.

On this day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of Illinois }
County of } ss.

On this day of December, 1940, personally appeared before me Kenneth R. Larson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Precision Instrument Manufacturing Company, a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of Illinois
County of ..... } ss.

On this ..... day of December, 1940, personally appeared before me Kenneth R. Larson, personally known to me, and by me personally known to be the person who executed the above instrument, who being duly sworn, acknowledged that he executed the above instrument as his free and voluntary act.

.....
Notary Public.

1733 DEFENDANTS' EXHIBIT NO. 17.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 25, 1941

Mr. George B. Thomasma
1121 Potter Ave.,
Park Ridge, Illinois

Dear George:

We are wondering if Precision is living up to its agreement to discontinue the manufacture of Torqometers after the specified quantity per our settlement agreement with them has been produced. In other words, how many wrenches of this type have they made since the settlement and how many more do they intend to make?

Do you know of any way by which we could secure accurate information in this respect?

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,
Pres.

fgw/ms

1734 DEFENDANTS' EXHIBIT NO. 18.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill., July 1, 1941

Mr. Fred Wacker
2100 Commonwealth Ave
North Chicago, Ill.

Dear Mr. Wacker:

In reply to yours of June 25, regarding P. I. M. Co. I have secur[illegible] some information and expect more about July 5.

Will you let me know when I may see you as I believe I can tell you more in person than I could by letter. I prefer evening or week end when and where you may select.

Very truly yours,

George B. Thomatsma

P.S. I am pleased to do all I can in this matter for you.

1736 DEFENDANTS' EXHIBIT NO. 19.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.—North Chicago, Ill.)

December 27, 1940

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

Re: Larson v. Zimmerman, Interference No. 77,565

This will acknowledge your letter of December 26 together with the enclosures referred to in your letter with respect to which I have carried out your instructions in each case.

I am returning herewith the following:

1. Duplicate original Automotive Precision-Larson agreement, which I have initialed twice on page 4 where deletions were made as per your instructions.

2. Check in the amount of $500.00 from Snap-On Tools Corporation to Automobile Maintenance Machinery Co. which we have endorsed to the order of your firm.

I also acknowledge receipt of your second letter of December 26 enclosing copy of your letter to Mr. Thomas Rafferty, the reporter who reported Larson's testimony. Your letter together with this enclosure requires no comment on my part.

Well, now that the odor of this unpleasantness is becoming more remote it is indeed a relief to feel that it is successfully behind us.

As you already know I very much appreciate your good efforts in our behalf and those of Jack, Harry Lindsey and your other associates; and I congratulate you all on the outcome.

While this has been an expensive procedure and while we did not collect any damages, you were completely
1737 successful in securing our patent, in tying Snap-On into the picture and in saving us from plenty of future worry, effort and added expense.

With Best Wishes to you all for a Happy and Satisfactory New Year.

Very sincerely,

Automotive Maintenance Machinery Co.

By Fred G. Wacker,

Fred G. Wacker,

Pres.

fgw:ms
enc. 2

1738 DEFENDANTS' EXHIBIT NO. 21.

(Filed Aug. 16, 1943 at 9:55 o'clock A. M. Roy H. Johnson, Clerk.)

Thomasma Affidavit.
Davis, Lindsey, Smith & Shonts
332 S. Michigan Avenue
Chicago

(Notarial Seal) 11-15-40 G. B. T.

1739 IN THE UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

Larson
vs.
Zimmerman. } Interference No. 77,565.

County of Cook, }
State of Illinois. } ss.

I, George B. Thomasma, having been duly sworn, depose and say that the statements hereinafter set forth were made by me in response to questions propounded by R. E. Fidler of Davis, Lindsey, Smith & Shonts, 332 South Michigan Avenue, Chicago, Illinois, attorneys for Automotive Maintenance Machinery Co., on November 7th and 8th, 1940; and that I have carefully read the statements following hereinafter, each page hereof being initialed and dated by me, and I know that they are true and correct.

My full name is George B. Thomasma. I live at 1121 Potter Avenue, Park Ridge, Illinois. My address used to be R. R. 1, Des Plaines, Illinois, but now this is in the Park Ridge post office.

I am not employed by the Hack Machine Company, 1228 Harding Avenue, Des Plaines, Illinois. I have been employed by that firm since February, 1940. Prior to that time I was employed by the Boyar-Schultz Corporation, Chicago. I was with them from the last week in June, 1939 until about February 14, 1940. I started with the Hack

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Machine Company, a few days after I left Boyar-Schultz.

1740 My trade is that of a machinist—sometimes they call me a toolmaker, although my trade is that of machinist.

Before I worked for Automotive Maintenance Machinery Co. I worked for the Monarch Machinery & Tool Co., 622 Clinton St., Chicaga; now at 4450 W. 5th Ave., Chicago. I was there from March 1, 1923, until I left to go to work for Automotive in 1927.

I saved AMMCO $1500.00 in connection with some materials that were purchased from Monarch, but I never received any credit for this.

Before I worked for Monarch, there was a lapse of some time in my employment, for how long I can't remember. My father and I repaired machinery in more or less of a haphazard way. I worked for my father in the repairing of wood-working machinery in Chicago. Then my father bought a place in Lake View and we did some repairing any remodeling there. He bought the place for $6500.00 and sold it for $15000.00. My father left Chicago then and built a place in Elgin. I then got married and went to work for Monarch.

In between the time I worked for Monarch and my last place of regular employment, I worked with my father as stated. Before working with my father I worked for the Chicago Machinery Exchange. I started to work for that firm right after the Armistice in the fall of 1918. I was there until about 1920 or 1921. The names of the men I was associated with at that time were: R. G. Ball, Norwood Park, manager; A. S. Coken, Sales Mgr.; Waldemar Gjersten, President and Borcheirs, now with the Second Hand Machinery Company on Lake Street.

It was at the Chicago Machinery Exchange that the codes FOG, etc. originated and it was like this:

The name involved in "Fiskegnano", each of the letters being numbered consecutively from 1 to 9 and 0, in the order mentioned. The adopted that code because the second
1741 hand machinery there had a tag applied and it had the name of the machine and a brief description of it, i. e., its capacity and size and what it would cover and in order that the salesman might know what the machine was for if

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they were showing it to a prospect. It was used as the price of the machinery and if the prospect had something that he was going to trade in on the machine the salesman would add on to the price a little more and the customer would not know anything about it—or, if there was a straight deal to be made (one without a trade-in) then the salesman could quote a straight price. That was the purpose of the code; it represented the price of a piece of machinery and any time that the machinery would be picked up thereafter you could look at the tag representing that piece of machinery and tell what the machinery sold for. It never left the machine—it stayed right with the machine until it was sold. It was then picked up and attached to the rest of the papers and kept with the files of the bookkeeping department. There was always a definite price in relation to the code number fixed for every machine before they went out. In other words, the code number was the price that they had to get, and the salesman was not to sell the equipment for below that price. I gave that code system to Larson and it was applied to the first few wrenches that were made—eight or nine of them, whatever it was.

These wrenches were made in the early part of 1938.

1742 I know Kenneth R. Larson. I can't say definitely when I first met Larson. I knew of his association with the Auto Parts Machine Company. I first met him when he worked there. This was about a year or two before I sold him the pin hole boring machine. I don't remember how I happened to meet him—just more or less of a chance meeting. I knew that he was associated with this parts house and my contact with him there in a small town.

I have lived at my present address going on 16 years. I own my own home entirely. I formerly had a Des Plaines address—my address formerly was Box 130, Route 1, Des Plaines, Illinois. That address is fairly close to the Des Plaines area. I never lived close to Mr. Larson.

Prior to living in Park Ridge I lived in Chicago. I lived there about a year and a half—we lived in a flat. Before that I lived at home with my father.

I have a brother in the McCormick Building. His full name is John Thomasma. My father is still living—he lives at 170 Wilcox Avenue, Elgin. He manufactures armature wedges for electric motors. His business is known

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under the name of G. J. Thomasma—Maker of Armature Wedges. He is a highly skilled worker and expert in connection with woodworking machinery and has done a great deal of work in connection with woodworking. Has been called as an expert by Earl Hart and the Fader Machinery Co.

1743 I have had some experience in woodworking—I have repaired and rebuilt woodworking machines. I don't like this work particularly on account of the dust and shavings—they have always been way behind metal machines. I almost went to work for Fader last winter, but on account of some trouble which Fader was having with his partner I decided not to.

I have never made any patterns—I recognize them and can check a pattern and a blue print and know whether one is right or wrong, but I have never done any work as a pattern maker.

I have not done any casting or foundry work. I can check castings from a blue print and tell whether they are right. My foundry experience is very limited.

I have done a great deal of heat treating work.

After I first met Larson, and up until May, 1936, I saw him very little and when I did it was merely by chance. I sold Larson a piston pin hole boring machine in May, 1936, and these are the circumstances.

Larson had learned of it and he came to me knowing of my connection with AMMCO and he asked me what I knew about it. I explained briefly what it would do and he asked if he could have a demonstration of the machine with his partner, Jack Kamppinen present. I did that through AMMCO and demonstrated the machine to him on a Sunday morning up at North Chicago. It was in the spring of 1936. At that time Larson was working for the Auto Parts Machine Company.

1744 Mr. Fidler: "Do you know anything about his connections at that time and any plans that he might have had?

Mr. Thomasma: He was contemplating setting up a company of his own at that time—Jack Kamppinen and Kenneth Larson.

Q. What was the outcome of that demonstration?

A. They were favorably impressed with the job that

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the machine did and assured me that they would like to own one and said it was just a matter of time until they got their shop organized that they would purchase one. They finally signed the order for a P. R. machine and I turned the order in and delivered the machine in person.

Q. Was there anything about the taking of that order that makes it stand out in your mind particularly?

A. One thing—it was a time payment deal.

Q. How about that—you got your commission?

A. I received my commission and I could tell the circumstances of the commission and the two checks, etc. Westphal didn't give me but 15% and then he gave me another check in which he added 5%—that is, it would be 5% when the $5.00 was added to it when the payments were completed.

Q. In connection with that deal how many times was Larson at Automotive Maintenance Machinery Co.?

A. He was there a total of three times—once for the demonstration and on another occasion, when a little pressure was put on him by Westphal because he was in arrears on his payments, he came up because, as he stated, the machine was not satisfactory. He used that as an ex-
1745 cuse for not keeping up the payments, that is that the machine was not working satisfactorily. He came up with the head of the machine, minus the base, and he said he hadn't made the payment because he was dissatisfied with the machine and that it wasn't working satisfactorily.

Q. How long after he got the machine was that?

A. We can establish that date. He complained directly to Mr. Allen on that occasion and I distinctly remember that that was during the lunch hour period up there—I saw him drive up there with his car. I was looking out the window and the next thing Mr. Allen called me into the office and told me about him being there and the fact that the machine was not functioning properly. He asked me if I could do anything about it. I told him that if he would bring it up to the second floor, we would correct it if we could—he took the machine back then. I was considered to be an expert operator of that machine. I personally delivered the machine to the K & L Motors. When I delivered it I demonstrated it and tested it. They called me back there that evening after dinner and they had

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played around with the machine and they had the tool bit in it wrong. They asked me why it would not operate correctly. I replaced the tool bit and then it worked all right. That was on the day of delivery. The next time I was up there was when he was in need of the over-sized equipment. He talked to me about the Kwik-Way equip-
1746 ment before he gave the order for the P. R. machine.

That was before I delivered the machine to him. Possibly two or three weeks before.

Q. Did you ever see a Kwik-Way wrench at his place?

A. Yes. The first time was when I went there after the order for the pin hole boring machine and he apparently had gotten the Kwik-Way wrench just that day or the day before. He was proud of it and explained it to me. That was before he gave me the signed order for the P. R. machine.

Q. What did he have to say about the wrench?

A. He said that he thought it was a very good piece of equipment to have and that it would prevent gasket failures and prevent cylinder distortion and gain equal tension on all nuts and bolts. He said that there was a chart that they supplied with the tension wrench that would give a man a definite, predetermined tension to draw up nuts and bolts of given sizes.

Larson mentioned nothing at that time about any wrench that he had. I gave him no pointers at that time about torque wrenches.

Q. At that time, was AMMCO making a torque wrench?

A. No.

Q. After you delivered that machine and demonstrated it, did you ever go back to the K & L Shop?

A. I was there occasionally at intervals spread out.
1747 For instance, I went there to tell them when they were in arrears with their account on the P. R. machine and I also stopped there to borrow their Kwik-Way tension wrench to take it up to AMMCO for them to look over and talk about. Later AMMCO bought one to eliminate that borrowing. They had none when they borrowed Larson's. They borrowed it on one or two occasions—I would get it and bring it back the next evening—it was never kept more than one day. It was only borrowed on one or two occasions.

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Q. Did you ever deliver any other machinery there—that you might have sold to him or that you demonstrated.

A. I talked to him about the engine rebuilding equipment but, for some reason, he was enthused about Kwik-Way equipment.

Q. Did you try to sell him rebabbitting jigs?

A. I did talk to him about it but I was hesitant about taking any orders from him because he was not very good pay according to Westphal. When AMMCO came out with their coil spring wrench, he wanted one of those. That was in the Fall of 1936, but he didn't get one because he was in arrears on his old account. Westphal said he wanted to sue them or put them in the hands of a collector. I passed it off because they were behind in deliveries and said that when they were caught up, I would see about it.

Q. How many times did you say you saw him and talked to him during 1936, after delivering the P. R. machine.

A. Probably 10 or 15 or 20 times.

1748 Q. What was your next contact with him after he asked you about the coil spring tension wrench of AMMCO's or with respect to any of AMMCO's products other than possibly trying to sell him on the rebabbitting equipment?

A. The oversized equipment was next and he came over to see if I could get it for him that evening.

Q. State in your own words what the circumstances were leading up to that and what happened.

A. He came over to my home that evening urgently in need of this oversized equipment and it was after business hours and the only thing that I could think of was to get in touch with some one in charge at the plant to get it for him. I went to Mr. Zimmerman's home, but he was not at home. His daughter suggested that we call Mr. Wacker or Mr. Allen. We called Mr. Allen at his home and he O. K.'s going up to the plant to get the specified oversized equipment for this machine. He made a note of what equipment we got at that time and we took it back to Des Plaines in Larson's car.

Q. Were torque measuring wrenches discussed at that time?

A. No, there was no mention made of a torque wrench

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at that time. We were not in a place at the plant where he could have seen any torque wrenches—we were on the first floor and there were no torque wrenches in evidence on the first floor at that time as I remember.

Q. Do you know anything about the tension wrenches developed at AMMCO?

A. Yes, I spent a good deal of time in the development of tension wrenches at AMMCO.

1749 Q. Your were sort of a foreman or something, weren't you?

A. What they call a key man. I never had the title of foreman or boss but I directed some of the men at times and had some of the boys with me on various jobs. My time was always turned in as hour time or day time. That's another thing that was always explained to me, that inasmuch as I was an hourly man, AMMCO had no claim on anything that I would do.

Q. You always turned in time slips then?

A. Yes.

Q. What was the first type of wrench that you worked on at AMMCO?

A. The first kind of wrench worked on was the coil spring.

Q. Did AMMCO go into production on that wrench?

A. Yes, I understand the total output ran up to about 25,000 units.

Q. Was there anything about that wrench that stands out in your recollection?

A. It was difficult to reproduce them in quantities and make them uniform because of the coil spring.

Q. What did you figure and tell others at AMMCO was the difficulty?

A. I suggested then that if they used a round instead of a square coil spring, that that would be more desirable and more controllable, or more easily controlled.

1750 Q. I am still talking about the coil spring type.

A. I suggested the use of a round cross section for the wire of the coil, whereas they were using a square wire.

Q. When was that wrench put on the market?

A. It was first shown at the show in December—in 1936—in the fall of 1936.

Q. How long did AMMCO continue to make that particular kind as their standard wrench?

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A. About a year, I believe.
Q. Did they continue to make wrenches after that?
A. Yes.
Q. What kind of a wrench was that?
A. It was a flat spring or rather an oblong-shaped spring of alloy steel.
Q. That was a wrench that had a casing with a handle on it and had on one end a member that turned in the casing and which would be engaged with the nut or bolt, which member had an arm or forging extending back through the casing and which had connected to its free end a flat or rectangularly shaped spring bar?
A. That's right.
Q. How was the other end of the spring bar associated with the casing?
A. One end of the spring bar was riveted to the forging. The other end was in between two rollers—pivoted in the casing.
Q. Did you have anything to do with the development of that wrench?
A. I worked on it to some extent.
1751 Q. Does anything stand out in your recollection with respect to that wrench?
A. It was heavy to handle. It was difficult to keep that spring bar tight in the forging.
Q. Was there anything about the shape of the spring bar?
A. The spring bar, I thought, should be round instead of rectangular.
Q. That was one suggestion that you made to Zimmerman respecting that wrench?
A. I suggested we use the round spring and omit the forging and he said that that couldn't be done—to forget about it.
Q. As I understand it, you did not suggest, to begin with, that they use that scheme of the casing with the rotatable head member and a straight spring bar in the casing with the pivotal connection between the spring bar?
A. Not specifically, no.
Q. What happened when you made the suggestion that they use a round spring bar?
A. Nothing happened except that I was told that it wouldn't work and to forget about it.

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Q. Now, were you in on the testing of that wrench?
A. Yes, I did considerable of the testing.
Q. Who worked with you on the testing of it?
A. Carl Crock.
Q. Did Mr. Zimmerman do some work with you in testing?
A. He would spend a little time at various intervals with us and make notes of what we were doing as to the uniformity of wrenches, etc.

1752 Q. In those tests of the wrench, did you find that it operated satisfactorily as a torque or tension wrench?
A. Well, they were satisfactory except that it was also difficult to duplicate them in quantities with any degree of certainty because of the rivets loosening after a certain amount of tension would be applied—they would stretch—they would let go a little—the dial would go off—you couldn't make a different dial for each wrench.
Q. What did you do in tesfing those wrenches?
A. Well, we put them on the test beam and used a weight a given distance from center—that is, a definite known weight at a given distance from center—and then used the wrench to lift that weight.
Q. You found that the wrench would show on the gauge the pressures being applied and that they did that satisfactorily?
A. Within three per cent, I believe—that was the allowable error.
Q. AMMCO went on the market with that wrench?
A. That's right.
Q. When was it that you were doing that testing work?
A. That was during 1937.
Q. When was it with respect to the time that you took Mr. Larson to the plant to get the oversized fixture—before or after?
A. We got that oversized equipment in October 1937. This testing, then, occurred all during 1937 prior to and after that—that is, the testing I was doing. I was even testing after they got into production on the wrench.
Q. At any time during the year 1936 that you happened to see Mr. Larson, and also during 1937, did he mention to you anything about any tension wrench that he had other than the Kwik-Way wrench?

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1753 A. No.

Q. When you borrowed the Kwik-Way wrench for AMMCO at times, was anything said about any torque wrench that Larson might have had?

A. No.

Q. Did you ever discuss with Larson any torque measuring wrench, other than the Kwik-Way wrench and the coil spring wrench that have been referred to, at any time?

A. Not until 1937.

Q. Was that before or after he got the oversized piston fixture?

A. After.

Q. About how long after?

A. In November of 1937.

Q. Have you any way of fixing that date?

A. Nothing definite other than that it was after getting the oversized equipment—I would say a few weeks after.

Q. State in your own words the circumstances surrounding your discussion of the wrench with Mr. Larson. You can tell about your ideas—your feeling with respect to the matter and that you had gotten the ideas and that you had indicated to Zimmerman about the round spring, etc. and about hooking the spring bar directly on to the head member and that, since they didn't pay any attention to you, you decided to work out at home your own ideas with respect to a wrench.

A. In November, 1937 Larson came to my home—I can't be sure of the purpose of his visit—I was down in the basement at the work bench and that is when we talked about the tension wrench and the possibility of making a tension wrench with a round spring attached to a head and

1754 he immediately saw that there was something there and we agreed to work together on it.

Q. What did you show him that night?

A. I think all I had to show was a socket and a piece of drill rod and a socket wrench handle.

Q. What did you explain to Mr. Larson at that time?

A. Well, I went into the subject of tension wrenches and that he was enthused about them, having used the Kwik Way wrench, and that I thought that this could be worked out to advantage. We discussed, then, the putting in of an aluminum casting. He didn't even know what it was all about and I suggested that we put a dial mechanism of

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some sort on there to measure the amount that this rod would bend. From my description, he then saw the picture of what I meant. He made the pattern on his own for the first casting and from there on we worked together on the machining of it and the machining of parts. I knew what to use and how to go at it and he had the lathe there on Pearson Street and he also had the facilities to get in and out of Chicago to get the necessary materials. Even then he was going to get around me. I suggested that we use a good steel for the bar and he was going to use ordinary spring steel and that was found to be "no go".

Q. What happened to the ordinary spring steel?

A. Well, if you would bend it or apply pressure in bending it, it wouldn't return to its normal position—it would exceed its elastic limit.

Q. Did you see Larson make those first patterns?

1755 A. I didn't see him make them. He made them on his own. I did see the patterns when they were finished.

Q. After you told Larson what you had, what did he say—that first time he came into your basement when you showed him what you were doing?

A. Only that he thought it was a good idea and that we could work together on it.

Q. Do you know whether he had any reason for making a statement of that kind?

A. No, other than personal gain.

Q. What about his own business at the K & L Shop?

A. It was not so hot. His own business, financially, was not what it should have been.

Q. How did he happen to go ahead and make patterns?

A. Well, he took that entirely on his own inasmuch as I had no way of making them—he took things in his own hands and it was just a matter of a day or so until he had castings made.

Q. Did you see him make the patterns—do you know where he got the wood or anything for the patterns?

A. No. That would be available in Des Plaines or he may have had some in his own basement.

Q. The castings that he had made were finished and machined on the lathe in his own basement?

A. No, the machine work for the castings was done in

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the K & L Shop. I was there when that was done. I worked with him on the machining of the castings.

Q. What machining did they require?

1756 A. A drill press and a lathe—you had to finish off the surface where the cover would fit.

Q. Who did that?

A. He did that with his machinery.

Q. Who drilled the holes for fastening on the cover?

A. He or I drilled them—I do not remember—he put in a lot of work on them for he had more time than I had.

Q. Do you remember any particular work that you did on the castings—the first ones?

A. There wasn't so much work on the castings. I made the heads out of chrome-vanadium steel and machined the springs out of Columbia tool steel and then directed him as to the hardening of them. He had a grinder there for the purpose of grinding them. He grounded them. I didn't do any of the heating treatment of them. I told him to take them to the Lindberg Steel Treating Company.

Q. Larson says that he had a little furnace about the width of a brick and the length of two bricks for a blow torch. What did he heat treat with that furnace?

A. He could heat treat those chrome-vanadium heads.

Q. Where is that Lindberg Company?

A. I think they are on North Laflin Street, Chicago. (218 No. Laflin Street, Chicago, Ill.)

Q. How many first castings did he have made?

A. Two—one with a straight handle and one with a round handle.

Q. The Ravenswood Foundry did those?

A. Yes.

1757 Q. He said he took sold old pistons and had them melted down.

A. If he did, I don't know about it. That is an entirely different kind of metal.

Q. Could he have taken in some aluminum pistons?

A. He may have traded them in for an allowance on them—that could be possible, but it never came to my attention.

Q. There was a second set of patterns made up?

A. I watched him make the second set of patterns. They put a flare on a later set of patterns. As near as I understand it, that was at Snap-On's suggestion—to pro-

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tect the dial mechanism. Larson, I'll bet, refers to that as a "ship's prow."

Q. He produced some spring bars shown by the photographs.

A. Real long ones?

Q. They were the same diameter all the way through—one of them is broken.

A. That was the fault of the heat treating.

Q. The other one is not broken,—it has a place for a pin through the end. Later on comes the shorter one.

A. Yes.

Q. There is another one with a little extension on the end of the spring bar and a sleeve slipped on that.

A. Yes.

Q. Another one with a reduced diameter rod.

A. Yes, I know all about those developments. —That drawing made by the high school boy—I made that drawing. John Thomasma, my brother, watched me make that drawing.

1758 Mr. Fidler: You are here to tell the truth and if it hurts you can't help it. You want to clear yourself in this picture. You don't think you have done any wrong but you want to show that you haven't, because somebody would like to make you the goat in this thing.

Mr. Thomasma: That's right.

Q. How long did it take you to make the drawing that John Thomasma witnessed?

A. About four or five hours.—I made it at home in the living room of my home.

Q. Who else saw you make it?

A. My brother's wife, Mrs. John Thomasma, and my wife. As to anyone else, I am not sure.

Q. When was that drawing made?

A. I believe it was in June 1938. Mrs. Thomasma went to a certain movie that Sunday afternoon and when she came home I was half way finished with it. My brother came in. It was on a Sunday afternoon.

Q. How did you happen to make it?

A. Well, it was just that—it was a backward procedure we had made the wreaches—several of them—and no drawings or sketches at any time. It was at my suggestion or Larson's that we make a drawing of the whole scheme and it seems that he suggested that I make it.

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He had been doing more of the work than I had and
1759 he felt that I should make the drawing for I had the necessary materials, etc.

Q. Did you have a tool before you to make it?

A. Yes, to take the dimensions from.

Q. What did you use to measure the different dimensions?

A. I had a draftsman's square and rule—I had most of the dimensions memorized—I knew the various sizes.

Q. Could you identify the particular wrench that you used in making the drawing?

A. Yes I could.

Q. And you could measure it up and check the figures on the drawing?

A. Yes.

Q. Where did you get the paper for that drawing?

A. From Larson—it was his paper. It was peculiar drawing paper—it was suitable for drawing, although it wasn't what a draftsman or machinist would refer to as drawing paper.

Q. Have I at any time that I have talked to you told you anything about where that paper for that sketch came from or told you anything about Larson's testimony in that respect?

A. None whatever.

Q. Did you go and get the paper yourself or did Larson get it for you?

A. He handed it to me. He had it in his basement. I saw it there—it was rolled up—I would refer to it as more or less of a wrapping paper in a roll form. It was almost a light tan color. Very light tan in color—I guess you call it beige.

1760 Q. You have never seen the actual drawing since you have been talking to me?

A. No I haven't.

Q. Was it paper that had anything to do with woodworking drawings?

A. It would be used in making pencil drawings. I have been in sash and door mills and in some woodworking plants where the draftsman will make a drawing and a man in the plant will make sketches from that drawing and they will take sketches off of that for various divisions in the plant.

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I have never seen that practiced very much in metal working plants.

Q. How much of that paper did he give you at that time?

A. Possibly two yards of it—roughly.

Q. Did you make more than the one drawing from it.

Q. Just one drawing, as I remember. I crowded everything on that one sheet.

Q. Do you remember what you did with the part that you had left?

A. I do not remember if I had any left over. If I did; I didn't preserve it.

Q. No possibility of any of it being around your house now?

A. As I remember it, there may have been a little bit more than to cover my drawing board. My board is 27x37 I think.

Q. Would he have been likely to just give you enough for one drawing—would he have given you enough so that you could use as much as you wanted?

Q. I may have a piece of it. At that time it didn't seem important. I just unrolled some of it and cut it off.

1761 Q. Did Larson tell you or do you know where he got that paper?

A. No.

Q. Was it clean or was it dusty?

A. It was clean—it wasn't soiled, although it was dusty from being in his place for some time—it had collected dust.

Q. What is your best recollection at the moment as to the time you made that drawing?

A. Approximate time of the year?

Q Yes.

A. I think it was along in June of 1938—we can fix that date definitely—I think it was in June.

Q. After you finished the drawing that day, did you keep it a while or did you turn it over to Larson?

A. It was not completely finished that Sunday—I turned it over to him sometime during that week, possibly Tuesday or Wednesday of that week.

Q. Do you know what Larson did with it after you turned it over to him?

A. I never saw it after that.

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Q. Were there any names or any identification marks that you may have put on it?

A. None whatever, other than I would recognize my own marking.

Q. In making the drawing, you didn't do anything peculiar that would stand out in your mind the minute you would see it?

A. Nothing in particular.

Q. Did you put any date on it at the time you saw it?

A. None whatever.

Q. Did you ever see it with any name or date on it?

1762 A. None whatever.

(Mr. Fidler shows Mr. Thomasma a photostatic copy of the drawing in question.)

Q. Do you see Ronald F. Ford, Edward S. Dawson and Kenneth R. Lawson (owner)?

A. Yes.

Q. I have shown you a photostatic copy of the drawing marked Larson Exhibit 27 in Interference No. 77,565 and ask you whether or not that is the drawing that you have been referring to that you made?

A. That's it—perfectly.

Q. Who put on the lettering and the words that appear on this drawing?

A. I did.

Q. Who put the figures and dimensions that appear on it?

A. I did.

Q. And what did you use to put on those words and numerals?

A. Pencil.

Q. What equipment did you have for doing that kind of work?

A. A drawing board, T square, draftsman's square and rule, compass and a pencil and an eraser.

Q. You made erasures from time to time?

A. That's right.

Q. Now, referring to this wrench—the wrench shown in Larson Exhibit 27—as you have stated, you had an actual wrench before you—what was the purpose now in making up this drawing?

A. To have a drawn record of our parts and sizes for reference.

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Q. Were you getting ready for anything in doing that?

1763 A. No we weren't anticipating anything that we were getting ready for—we had been working along and following what I termed a backward procedure, making parts with no drawings or notes for sizes and dimensions for our own records, which is necessary.

Q. Do you have any ideas about the keeping of records, and what you should do in that respect?

A. I believe in keeping records of all parts and dimensions for reference and for convenience.

Q. Now, referring to this sketch, Larson Exhibit 27, and the wrench from which it was made, please state just what parts of this wrench that you helped make and what you did in helping to make them or finish them.

A. Too bad that this isn't larger. There's a part marked H14—it is strictly old matter. The head member, I made that. I helped in the laying out and drilling and tapping of the case and cover—that's another one of my ideas, and then put the instrument on the case instead of on the cover. I had a particular reason—the cover can do tricks and not be constantly uniform. I put it on the body, which I thought was correct. That was my idea.

Q. You put the gauge back at the handle, I believe.

A. Right as near to the handle as possible so that it could be seen. That was my own idea. I got that idea from experience that I had at AMMCO. They had theirs farther from the handle.

Q. The coil spring wrench which had the gauge at the extreme end opposite the handle? The coil spring

1764 wrench that originated at the Grip Nut Company—that's the Sharp patent.

A. There's a part that I made.

Q. That's the T-shaped gauge plate?

A. That's right—they're hand made.

Q. Where did you make that?

A. In his basement. Another thing—he and I joined together and bought a lathe—you can verify that at the Des Plaines National Bank. We bought it in order to get out of the K & L Shop. We used it for the wrench.

Q. You actually had it delivered?

A. We bought it second hand—borrowed the money. It was stored in the corner of the Automotive Service

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Station—where they grease and wash cars. Larson had a boyfriend pick it up and deliver it to his home.

Q. How much did you pay for it?

A. $125.00. We borrowed $100.00 to go with what we put in together. I paid $15.00 and he put in $10.00. He has a receipt. It was left in his name. The money was borrowed in our joint names.

Q. Whom did you buy it from?

A. I don't know the name. The address is Ellinwood Avenue and Graceland in Des Plaines. He had it stored there. He had no use for it. He stored it there and then moved it to Larson's basement and proceeded to use it.

Q. Was that the lathe that you used to finish whatever wrenches were made after you got together with Larson?

A. Yes, one of them.

1765 Q. What went with it—what tool equipment?

A. There was a counter shaft with it and some tool holders.

Q. Any finishing tools?

A. Well, by finishing tools, you mean—

Q. Cutters of any kind?

A. No cutters—no tool bits with it. I think it had a chuck and a couple of wrenches and a steady rest.

Q. Where did you get the tool bits that you used?

A. He had quite a number of those.

Q. Did he have a lathe at that time?

A. He had only wood turning lathes before that in his basement.

Q. Would they be adapted for work of this kind?

A. No.

Q. He, up to that time, didn't have available in his basement any kind of lathes or other tools that he could use to finish these wrenches?

A. No, other than this wood turning lathe and a wood saw for cutting wood.

Q. Do you know what became of that lathe?

A. It is now the property of the Precision Instrument Company.

Q. Do you know how it happened to be in their possession.

A. Well that was turned in as the setup of the corporation as part of the machinery and tools and fixtures

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and equipment that was turned in on the corporation in the setup.

Q. Did you get any shares of stock based on your interest in that lathe?

1766 A. The stock that I received was based on the tools that were turned in. The corporation minute books show that. I took a look in there a few weeks ago to satisfy myself as to that. It is written in there all itemized.

Q. Did you get any shares of stock based on your contribution with respect to the wrench?

A. No, none whatever.

Q. Did you receive any compensation at all in any way for what you contributed?

A. For my work on the wrench—none whatever.

Q. As I understand it, you suggested the wrench idea to Larson?

A. That's right.

Q. Did you just give him the wrench or did you get paid some way for it?

A. I received no pay in any form in money.

Q. Well, I mean, your stock would have no connection whatever?

A. No, no connection whatever—that is, in writing—there is no record in writing.

Q. Was there any other understanding between you and Larson in that respect?

A. There was a verbal understanding between Larson and I that we were to be partners on the wrench but there was nothing in writing to that effect.

Q. Well, then, wasn't that the reason you got that many shares of stock?

A. I believe it would be.

Q. You got 300 shares to begin with and Larson got 300 shares?

A. Yes.

Q. And then you gave up 40 shares each for Carlson?

1767 A. For Carlson's efforts in promoting the selling of the stock.

Q. How many shares does Carlson have?

A. Now, according to the records, 110 shares—he bought 30 shares.

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Q. The machinery and tools, etc. that you had an interest in and that you turned in, of course, wouldn't amount in value to the value of stock that you received?

A. No.

Q. And I understand that you would testify that the shares of stock that you received paid in part for your contribution with respect to the wrench?

A. That's right.

Q. Did you turn over any inventions or any contributions of any kind not related to the wrench to Larson or Precision Instrument Co. for any interest in stock?

A. None whatever.

Q. When was it that you made the head marked H or 14 on the drawing Larson Exhibit 27—do you remember when that was?

A. I would say in December, 1937.

Q. And how do you fix that date?

A. Well it was close to the Holiday Season, it was the latter part of December.

Q. Was it before or after the time that you went with Larson to AMMCO's plant to get that oversized piston fixture?

A. It was after the trip to AMMCO for the oversized equipment.

Q. As I understand it, at that time nothing had been done on the wrench between you and Larson?

1768 A. That's right, nothing was done.

Q. It was after that that he came into your basement and saw you working on something and you told him about the wrench?

A. That's right.

Q. Now; the part marked 15 on Larson Exhibit 27 is what?

A. That's the spring bar.

Q. Did you have anything to do with the making of the spring bar for the particular wrench of which this drawing was made?

A. I believe I turned them on the lathe, that is, rough turned the diameter. The heat treating was done by the Lindberg Steel Treating Company and Larson did the grinding at the K & L Shop.

Q. Did you have anything to do with the reduced tail piece that is on this spring bar 15?

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A. There is nothing to that, just a piece of bar stock—no machine work required.

Q. Do you know who made it?

A. I cut off some of them, I believe. There's nothing to that.

Q. This drawing also shows some gauge parts. What do you know about them?

A. This is a little piece of stock (referring to E on the drawing). I believe that's 3/16 diameter and then bent over and flattened and a little slot sawed in there. He made those up—I saw him make them.

Q. Where did he make them?

A. I think the first ones he made in the K & L Shop.

Q. When, do you remember?

A. In January 1938.

1769 Q. That was after you sold him the piston fixture?

A. Yes.

Q. What about the part marked "D"?

A. That represents a littles segment and there are teeth in them. These were purchased. He bought those from the Wetzig Manufacturing Company.

Q. What about the part marked "C"?

A. That's turned on the lathe out of a little piece of stock. He made that.

Q. Did you see him make it.

A. No, those were done when I wasn't there.

Q. What about "B"?

A. That's a little hair spring. He bought those from some clock or watch parts company.

Q. Do you know the name?

A. I don't remember the name.

Q. Now, referring to the casing marked "K", what do you know about that?

A. They were made of aluminum from wood patterns and he made the wood patterns.

Q. Did you see him make the wood patterns.

A. Not the first ones.

Q. Do you remember what the first ones looked like?

A. They were black.

Q. Is that unusual?

A. Not particularly unusual. It is common practice, in patterns, to make a mixture of lamp black and shellac and paint them black.

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Q. Do you know where he got the lamp black?

1770 A. I think he had it—he must have had it on hand.

Q. Did you see him put the shellac and lamp black coating on?

A. Not on the first patterns. I saw him coat others later.

Q. You have seen, though, the first ones?

A. I saw the first patterns, yes.

Q. You haven't seen those patterns, or photographs of them, since you talked to me?

A. No.

Q. What did they look like?

A. They were black patterns and one had a peculiar large handle or grip and one had just a small round grip that could be easily identified.

Q. What about the shape of the casing? In other words, this is not it? (Referring to the drawing Larson Exhibit 27.) I show you a photograph and ask you if you see anything on it that looks familiar to you.

A. These patterns are the first patterns that he made.

Q. The patterns which are black and which are marked Larson Exhibits 6, 7 and 8, is that correct?

A. That's right.

Q. Now, I still haven't told you anything about how these patterns were used or how castings were made from them, have I?

A. No.

Q. Do you remember what the purpose was of this casting having the straight handle and the round handle.

A. The round handle could be slipped on over the straight handle of Exhibit 6 to save making a new pattern.

1771 Q. What was the very first pattern piece made there?

A. Exhibit 6.

Q. How did it happen that the pattern piece Exhibit 8 was made?

A. That was to be attached to this slipped over it to provide a ground grip on that handle.

Q. Was the wrench to begin with to have just a handle like Exhibit 6 or was it to have a round handle like Exhibit 8?

A. The fact was we didn't know what kind of handle we wanted. By making one casting off the pattern in this form

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and by making another and slipping it over, we had one of each, to determine what we wanted.

Q. Do you know where Larson got the information for the dimensions that he used in making the patterns?

A. Largely from collaboration with me.

Q. How would you have any ideas in that respect?

A. From my experience in working in that field at AMMCO.

Q. Now, you didn't see Larson make those patterns, did you?

A. No, for Exhibits 6, 7 and 8 I didn't.

Q. Did you see them after they were made and before the castings were made?

A. No, the first I saw them was when he had the castings made.

Q. When Larson came to your home that evening and you were down in the basement, how did he happen to come down there to the basement?

A. I don't know what directed him down there, but I was down there. He could know that I was there. There's a window in my driveway overlooking the bench where I was at the time. If he came in through the house or through the garage entrance; I don't know, but he came down there.

1772 Q. What kind of heating equipment do you have in your home?

A. Hot water heat.

Q. What kind of fuel do you use?

A. Coal.

Q. What kind of furnace do you have.

A. I have a hot water boiler, fed with an automatic coal stoker.

Q. How long have you had that?

A. I think three or four winters. I think I bought it in the fall of 1937.

Q. Did you ever take Larson down there and show him your new stoker?

A. I did show it to him when we first got it. However, he showed no particular interest in the stoker—where he was living he had oil heat.

Q. How early a date did he first come to your house?

A. The first time he ever came to my house was when he

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came in to see me about going to AMMCO to see about the P. R. machine. In the spring of 1936.

Q. Was that when you showed him the stoker?

A. No, I didn't have it then. I distinctly remember that I didn't have it then.

Q. Did he come to your house then when he wanted the oversized fixture?

A. That's right. He came expressly to see if I could get the oversized equipment at that time.

A. That's right. He came expressly to see if I could get the oversized equipment at that time.

Q. Did you have the stoker at that time?

A. We didn't waste any time that evening for anything.

Q. When was the next time he was in your home?

A. When he came about the P. R. pin hole boring machine.

1773 Q. When was it that you showed him the stoker, after the piston fixture incident?

A. I believe that was after the piston fixture incident.

Q. Now, when Larson came down to your basement that night, was that before or after the piston fixture incident?

A. When we talked about the wrench?

Q. That's right.

A. That was after the piston fixture incident.

Q. At the time that Larson came down there and talked to you about the wrench, please state in your own words the wrench idea that you had in mind, if you had a complete wrench idea in mind.

A. The idea I had in mind was a round beam that would bend or reflect as pressure was applied and, by measuring that deflection through an instrument or an indicator of some sort attached to the wrench, it would give a reading. I had in mind foot-pound reading to determine the pressure applied to a nut or a bolt.

Q. How was the spring bar to be attached?

A. Well, it could be pressed into a tight fit in the hole in the head member.

Q. By the head you mean the member that was to be engaged by the work?

A. That's right.

Q. Did you have any idea as to how you were going to support the other end of the spring bar?

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A. Well, I knew that it should be free to move or pivot in some way.

1774 Q. You knew that from work done on the wrenches at AMMCO?

A. Yes.

Q. Did you have any idea of how you would support it so that it would be free to pivot and slide?

A. Yes, I had in mind that it would slip through a hole in a bearing of some sort that would support it.

Q. You didn't have in mind any particular kind of bearing at that time?

A. Nothing definite.

Q. Did you know at that time what kind of gauge structure you would use?

A. I wasn't definite about gauge structure.

Q. Did you have any idea where to locate the gauge structure?

A. I had an idea of making them—on working out something in the way of a gauge.

Q. I mean as to the position on the wrench that you put it?

A. As near to the handle as you could possibly put it.

Q. Did that present any problem with respect to connecting the spring bar to the gauge?

A. No.

Q. Could you still connect it the same way that AMMCO did?

A. No, on account of theirs being connected in the center of the wrench and to put it at the end you would have to have some other means of hooking it up to get the movement.

Q. Had you worked out anything like that at the time you first told Larson about it?

1775 A. Nothing definite, although I had given some thought to it. I hadn't worked anything definite out.

Q. Had you made any skefches with respect to your idea at that time?

A. No sketches or drawings of any kind.

Q. Then you didn't show Larson, at that time, any sketches or drawings?

A. No, no sketches or drawings.

Q. At that time, did you show Larson anything?

A. Nothing other than I had a piece of drill rod and

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some sockets and I do not remember what else, I had to convey my idea to him—in applying pressure—it wasn't heat treated, but that was the thing that I was working for—that applying pressure to that would cause it to bend. I explained then that by measuring the amount that it would bend it would always be constant and that you could measure that.

Q. You didn't have a complete wrench in any sense of the word at that time?

A. Only the idea that I had something to work on.

Q. It is my understanding, from what you told me, that you did not originate at AMMCO the idea of using a straight rod and having one end fixed on to the forging or some other part of the member that engaged the nut and the other end connected to a member that swiveled in the casing, is that correct?

A. That's correct.

Q. You did not originate the idea that, in addition to swiveling, the spring bar would slide longitudinally in that swivel?

A. No, I didn't originate that.

Q. What you did originate in your own mind, after 1776 that other idea had come forward was the connecting of the one end of the spring bar directly to the head member?

A. That's right.

Q. And the use of a round spring bar and the use of a gauge located at or as near as possible to the handle so that the operator could see it easily?

A. That's correct.

Q. When did you get these last ideas that you had in your mind?

A. In 1937, while working at AMMCO.

Q. In what part of the year?

A. Possibly in September or October of 1937.

Q. After the spring-bar type of wrench had been tested?

A. After the spring bar type of wrench had been tested and approved at AMMCO.

Q. When you got these ideas, why didn't you tell Mr. Wacker about it?

A. I had no opportunity. I told Mr. Zimmerman on a number of occasions of ideas that I thought had merit. However, they were sidetracked or not used. I mentioned

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the possibility of using the round bar and fastening it directly into the head member and I was told that this was not practical and would not work. I had it explained to me briefly that the round bar would break if used in this manner.

Q. And because Mr. Zimmerman poolt-poohed the idea, you didn't go further with it, is that it?

A. I still thought that the idea, if worked on, could be used. It was a matter of using the proper metal in the spring bar and the correct heat treatment of the spring bar and that it would then work out satisfactorily and could be used. I carried that idea in mind for some 1777 time and that is the idea that is now used in the tension wrench made by the Precision Instrument Company.

Q. And that is the idea that you conveyed to Larson in the basement in your home that evening?

A. That is the same idea that I discussed with Larson that night.

Q. What did he think about it?

A. He thought it was a good idea and suggested that we work together on it in his shop at the K & L Motor Company inasmuch as he had the equipment and I had none.

Q. What did you tell Larson then?

A. I agreed to work with him in my spare time—the only time that I would have inasmuch as I was working at AMICO—and he, in turn, agreed to devote his spare time at the start. This we did for a few months. By spare time I mean evenings and Sundays.

Q. And where did you do this work?

A. At the K. & L. Shop.

Q. When was that?

A. December, 1937 and January, 1938.

Q. What was the nature of that work?

A. He had the first pattern and secured castings and I made the machine parts necessary for use in the first wrench.

Q. How many castings were made up at that time?

A. Two castings.

Q. Why were there two?

A. One with a straight handle—just a straight round handle with no grip shape to it, and the other with a large grip for a handle.

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1778 Q. Did you have any cover plates made?

A. I believe there were two cover plates made.

Q. Did anything have to be done with the castings after they were made?

A. It was necessary to machine them and bore holes in them.

Q. You did that work, or did Larson?

A. We did that between us—making the holes in them and machining the surface so the cover would fit on the body.

Q. What machines were used for that purpose?

A. A lathe and drill press and, I believe, we bored the large hole on the pin hole boring machine, as I remember, on the first one.

Q. You did this work on machines at the K & L Shop?

A. That's right.

Q. In this first pattern, I note that it provides for a raised boss-like portion on the end of the wrench opposite the handle, why was that?

A. That was to provide additional material for bearing surface.

Q. I notice that there is a hole provided for in the end of the pattern.

A. That is referred to as a core hole.

Q. What was that for?

A. To let the boring bar through in order to bore a hole.

Q. Was that hole in the casting as made up?

A. Yes.

Q. Was it the proper size hole?

A. No, it was necessary to machine it.

Q. That is the hole that you bored out on the pin
1779 hole boring machine that Larson bought previously from AMMCO.

A. That's right.

Q. Is there anything unusual about the cover that you used with those first patterns and castings. Did the cover play any part in supporting any part of the wrench or anything?

A. The first one did, I believe. That's right, the first cover served as a support in part for the head member. The first ones were made that way.

Q. Who suggested that?

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A. I did.

Q. Do you remember why you suggested it that way to begin with?

A. That's the way the AMMCO forging was fixed in there.

Q. You are already familiar with that arrangement then?

A. That's right.

Q. After these casing castings were received and you finished them, as you have stated, what did you next do?

A. We devoted considerable time to some sort of mechanism that would measure or act as a gauge on this particular wrench, to denote the tension.

Q. Did you already have your spring bar at the time you got the castings?

A. I think Larson picked up some spring steel and it didn't work.

Q. What kind of a spring bar was that?

A. That was a round straight spring bar of ordinary spring steel.

Q. About how long was it? Was it full length up to the gauge or was it only part way, with reduced tail extension?"

1780 A. It was the full length.

Q. And the end of the spring bar was to be concented to the guage without any reduced extension on the spring bar?

A. That's right.

Q. When did you say it was that you got those first castings—about when?

A. I believe in December, 1937.

Q. How soon after you got the castings, did you make that spring bar?

A. About immediately.

Q. Who made the spring bar?

A. Larson made the first one.

Q. Did you see him make it?

A. Yes, I was there when they were made.

Q. Was it heat treated?

A. I think he took them and had them heat treated and they were found to be unsatisfactory.

Q. Well, did you put that in the castings that had been made—the spring bar that you just mentioned?

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A. The first ones weren't put in castings. They were unsatisfactory and we found that by just holding them in a vise and bending them, they would not return to their normal positions. It was then that he followed my directions and purchased Columbia Tool Steel stock—in December, 1937.

Q. You attended to the ordering of that steel from Columbia?

A. Larson did. He picked it up in person.

Q. Did he buy it?

1781 A. I believe he bought it.

Q. Was it already heat treated?

A. No, it was not. It was machined and then heat treated.

Q. Who machined them?

A. I machined them and did the rough turning and then Larson took them and had them heat treated.

Q. You took them?

A. He took them. I told him where to take them. He took them to some other place first. I think he was charged $1.00 or $1.50. I think there were six of them, but they were not satisfactory. At the next attempt at heat treating, he followed by instructions and took them to Lindberg.

Q. The first ones were not satisfactory?

A. They were not satisfactory. We tried one or two of those and they were satisfactory to some extent but they weren't entirely what I was working for. He didn't know what I was working for but they weren't exactly what I wanted. The next steel we used was from Ludlam Steel Co. and it was heat treated at Lindberg.

Q. Those first ones that you tried—the spring bar was long enough to extend directly to the gauge?

A. That is correct.

Q. And the next ones that you got from Ludlam and which were heat treated by Lindberg, they were also full length, extending to the gauge, is that correct?

A. They were short ones with the hole bored in the end and the reduced diameter rod which was connected to the gauge mechanism.

Q. Now, those first ones, you tried one or two of them in the wrench? What did you do in that respect?

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A. We tried them to determine whether they would
1782 return to normal position after bending them or flexing them.

Q. In a wrench or vise?

A. Both, and broke one, I believe.

Q. You didn't have the cover plate on when you did that?

A. The cover plate was on it.

Q. The one that broke was in a vise? What I am getting at is did you have a gauge on it when you tested those first ones?

A. Well, we determined with an indicator (we used a dial indicator for our gauge) we had no gauge mechanism made up as yet.

Q. What do you mean a dial indicator?

A. That is the common name applied to it. Several companies manufacture them: Starrett make them and so do Brown and Sharp. There is a mechanism inside of the case.

Q. Something like you are using now?

A. Similar to it.

Q. How did you connect the spring bar to the indicator?

A. Through a hole in the casting.

Q. A lateral or longitudinal hole—crosswise of the wrench or lengthwise of the wrench?

A. Crosswise of the casing.

Q. In testing it, what did you hook the wrench to.

A. In a vise—just holding it in a vise—the very first tests.

Q. That was, then, those first castings and the first spring bars and all of this comes in December, 1937?

A. That's right.

Q. Did you watch the gauge to see whether the gauge would work?

A. To see whether it would run to zero when taking off the applied pressure. It worked fairly well although it
wouldn't return to dead center each time, which meant
1783 there was a little set if great pressure was applied.

Q. Now, when you came to the spring bars that you got from Ludlam and had heat treated at Lindberg, you assembled them in the wrench?

A. Yes, two, we worked on the assembling of them.

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Q. Were they in the same castings that had previously been made?

A. No. By that time he had made new patterns and got additional castings and changed the shape of the patterns somewhat.

Q. When was that now?

A. I believe that was January, 1938—just past the Holiday Season.

Q. That was when you started using the reduced end extension to hook on to the gauge?

A. That's right.

Q. Where did you get the gauges that you used then?

A. They were hand made—we made them.

Q. Whose idea was that fork on the gauge to connect on to the spring bar?

A. I believe that was my suggestion. I suggested it to him and we made those together.

Q. Had you ever seen anything like that before—that general idea of a fork connecting on to a pin on a gauge?

A. Well, we used that on one of the wrenches at AMMCO—quite similar to that—for fork engaging a pin.

Q. Who assembled the parts in this wrench and where was that work done—I am talking about the wrench with the steel bars that you got from Ludlam?

A. We were still working on them at the K & L Shop?

Q. Who assembled those and fixed them up?

1784 A. Larson and I did the work. He, however, did more work than I did because he had more time to devote.

Q. Did you test those—how many did you make up like that?

A. There was only one completely finished, that was finished in every respect.

Q. Did you test it?

A. Yes, we did considerable testing then.

Q. How did you test it?

A. By making a test bar out of cold rolled steel, as I remember, that was about 26 or 28" long and was pivoted at the center with a hole at each end where you could hook a rod on it and hang weights on it. We made weights out of scrap lead and each weight, with the exception of one or two, weighed ten pounds and they were made in a pan to act as a mold.

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Q. Who made them?

A. Larson and Barrgren's brother-in-law and I had a hand in making those lead weights. We made them at the K & L Shop.

Q. Now, I haven't told you anything about Larson's testimony with respect to this testing apparatus, have I?

A. Nothing whatever.

Q. Where was this testing apparatus set up?

A. The first test bar was fastened to the side of an old drill press in the K & L Shop.

Q. Was anything done to the drill press to do that—to attach it?

A. There was a hole in the casting that accommodated this bar. There was a boss and a hole through it where this bar could be bolted on it.

1785 Q. That was this 26" bar that you told me about?

A. That's right.

Q. You say the first one, was there another?

A. There was another test bar made after that. It was set up in his basement.

Q. What was that test bar like?

A. That has a name all its own—I can't think of it. The graduated beam is a standard item made by several scale companies. They're quite common on farms—a hay scale or something like that. It is a bar with a hook-shape on one end and the beam of it is graduated and marked—the figures are marked on the side of the beam.

Q. You could describe it?

A. I could make a pencil sketch of it. There are two small weights and one weight is about twice the size of the other one. There is a large weight and a small weight and this weight is designed to hook over so that it can be moved along one side of the beam. The arrangement for hooking the wrench to it was done through a cantilever movement through a large iron bar that was attached with a rod to this beam scale and the beam scale was hung on a hook that was fastened to a floor joist in his basement.

Q. I haven't told you anything about Larson's testimony or anything up to this point, have I?

A. Absolutely not.

Q. I show you a photostatic copy of Larson Exhibit 35 and ask you if that is something on the order of what you have been telling me about?

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A. That's right.

1786 Q. Where was the wrench attached with respect to any numbered part on this sketch?

A. A38.

Q. Do you know where the scale tester came from?

A. I believe he bought it at Sears Roebuck.

Q. When was that?

A. In 1938.

Q. Did you have anything to do with the purchase of it?

A. No.

Q. Did you put up any of the money?

A. No.

Q. Do you know where Larson got the money?

A. I believe he used his own.

Q. Why was it that you didn't share that expense?

A. In the purchase of any of this material, I didn't have any money to share.

Q. Do you know what happened to the scale testing device?

A. That was turned in with other equipment to the Precision Instrument Company.

Q. Do you know whether it is still there?

A. I believe it is.

Q. Do you know where those very first castings that you referred to that were made from the first patterns came from?

A. Ravenswood Foundry Company.

Q. Who paid for those?

A. Larson paid for those.

1787 Q. Did you share the expense at all?

A. No.

Q. Was there any understanding between you and Larson with respect to expense on the wrench?

A. We never mentioned that. There was no understanding or agreement to that effect.

Q. Did the fact that you contributed the idea have anything to do with that?

A. There was no understanding to that effect; however, that was in my mind, that my contribution of the idea represented my share of any expense that he might be put to in the course of experimenting.

Q. And since you had contributed the idea, these incidental items of expense—

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A. They were trivial and should have been borne by him.

Q. As between you and Larson, what was your interest in the enterprise, if any?

A. 50/50.

Q. I show you a photostatic copy of Larson Exhibit 29 and call your attention to the lower part of the sketch appearing thereon and ask you if that looks familiar to you.

A. Yes, that is the original test beam.

Q. Where was that mounted?

A. On the side of the drill press at the K & L Shop.

Q. Did anybody see it there in addition to you and Larson?

A. Any number of people saw it. Jack Kamppinen saw it and a fellow by the name of Wolf saw it. He just put it up there and left it. It wasn't there all the time. It could be slipped off easily. It was used at the 1788 K & L Shop until we moved everything over to Larson's basement. This test beam was moved over there and it was mounted to a post or a column in his basement. That was before he got the Sears Roebuck scale.

Q. When was it moved over there?

A. Probably in March of 1938.

Q. Have you any way of fixing that date?

A. The only way of fixing that date would be that it was in close conjunction with the time that we purchased that South Bend lathe. It was closely related to that date and that date can be fixed by the date that we purchased that lathe, which can be verified by the bank because that is the date that we borrowed the $100.00 jointly to apply on the purchase of the lathe.

Q. It was moved after the purchase of the lathe?

A. That's right.

Q. How long after that did you get the Sears Roebuck device—after the first one was moved to the Larson basement.

A. Possibly a month or six weeks.

Q. Did he get that Sears Roebuck device on time or pay cash?

A. He paid cash—he said he did.

Q. How much did he pay?

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A. I believe he said it was $4.50.

Q. Did Sears Roebuck give a receipt?

A. They give you a cash register receipt if you purchase for cash but I, myself, and others often drop them before leaving the store, unless there is some reason to preserve them.

Q. What was done with that first testing structure after you moved it over there and you got the Sears Roebuck device?

1789 A. I believe it was kept although it was no longer used. It was kept in his basement. It could be slipped off the post and I do not think it was disposed of.

Q. Where did you get the beam that was used for that?

A. I think he picked that up from Passman Brothers on Washington Street near Union Street, Chicago.

Q. Did he build that first testing device alone or did you help him?

A. I directed what he should do and he did it.

Q. Did it test foot-pounds or what?

A. It tested in foot-pounds. It was so designed that it would test in foot-pounds with proper weights on a rod hooked onto this beam.

Q. I again show you photographs of Larson's Exhibits 6, 7, 8, 23 and 24 and ask you whether you know anything about the parts marked 23 and 24.

A. They are changed patterns that were made after the conference with the Snap-On Company. The flare was put on at their direction.

Q. Do you remember whether or not or know anything about that being a build-up from some originally made patterns?

A. It was putty or plastic wood that was added onto the other patterns that he had on hand.

Q. Do you see any patterns there from which the second casting was made?

A. That would be this pattern here (referring to 24) minus the flare on the side.

Q. You could identify all of them if you would see them?

A. Yes.

1790 Q. Did you have anything to do with the gradual change in development of those second patterns?

A. You mean, did I work on them?

Q. Yes.

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A. Larson did all of that.

Q. Did you see him work on them?

A. Very little. He did that at home in his basement when I was not with him.

Q. Do you know where those black patterns were kept after they had served their purpose?

A. They had two places where they were kept. They were kept at his home and also at the K & L Shop.

Q. Do you know where the second set of patterns were kept after they were made?

A. They were kept at his home after they were used in getting castings.

Q. How often were you at his home after you got that lathe?

A. I was there quite frequently after we got the lathe.

Q. How many times a week?

A. Almost every evening—three to five a week and Sundays.

Q. How long would you be there?

A. It varied—from three to five hours in an evening and usually all day Sunday.

Q. Before you moved everything over to his basement, how often did you go down to the K & L Shop and work with him?

A. The work at the K & L Shop was done evenings and Sundays.

Q. How many times a week?

A. Four or five and every Sunday while we were
1791 working at the K & L Shop.

Q. Was anyone else around there those evenings at the K & L Shop?

A. Occasionally someone would drop in to talk.

Q. How about Mr. Kamppinen?

A. He was never there.

Q. How about after you moved everything over to Larson's home, did anyone stop in then?

A. Various visitors would stop in, but Jack Kamppinen never came there.

Q. Do you remember the names of any of them?

A. Ford, Dawson and Stone.

Q. Who was Stone?

A. He is a manufacturer's representative, too. He was

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seriously considering the distribution work. He can verify anything I say.

Q. Did anyone else drop in when you were there?

A. I think my brother has been in that basement too—John Thomasma.

Q. How about Whittaker—Larson's brother-in-law?

A. I am sure I have seen him in Larson's home, but to be positive about seeing him in the basement, I am not sure.

Q. How about Hymes?

A. I can't place him in the picture. If I saw him I would know whether or not he was there. I can't place the name of Hymes.

Q. Who was Ford?

A. Ford is the friend of Larson's who works for 1792 the fire department in Evanston.

Q. What do you know about Barrgren?

A. Barrgren, when I first met him, was associated with the Emsco Brake Lining Co.

Q. How did you happen to meet him?

A. He called at the K & L Shop and sold brake linings to the boys there.

Q. Was that after your working hours or how did you happen to meet him there?

A. I was there on my own time when I was associated with Larson working on the tension wrench.

Q. About when was that?

A. I believe I met him in January 1938.

Q. In the evening?

A. Early evening, yes.

Q. Was he shown the wrench?

A. He was shown the wrench at one of these meetings and displayed an interest in the wrench and we talked about the possibility of his distributing the wrench.

Q. Did he make any attempts in that respect?

A. To my knowledge he made no attempts in the distribution of the wrench. He merely talked about it but never did anything about it as far as distributing, selling or trying to sell the wrench.

Q. Do you have any recollection of him going to some motor mart in Des Plaines where his brother worked?

A. No, I do not know anything about that. He was put off promptly because he didn't have any money.

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1793 Q. Why didn't you do any dealing with him?
A. He was financially unable to handle the matter.
Q. Do you know whether he ever bought a wrench?
A. Never to my knowledge. If he did it was between Larson and Barrgren and I never learned of it.
Q. Did you have any wrenches to sell or to give salesmen to try to sell.
A. No, we did not. We only had one wrench.
Q. How many times did you see Barrgren?
A. I don't know actually how many times; I did see him on several occasions.
Q. Did you ever see the wrench demonstrated to him?
A. Yes, we demonstrated the purpose of the wrench.
Q. Did you demonstrate it at any time on that testing beam that you had at the K & L?
A. Yes.
Q. When was that?
A. That was during January of 1938.
Q. How do you fix that time?
A. Well, it stands out in my mind. It was shortly after the Holiday Season, and I am quite sure it was in January.
Q. Shortly after you had gotten together with Larson?
A. That's right.
Q. What do you know about this man Dawson?
A. He entered the picture considerably later than that.
Q. You don't know, then, whether Barrgren made any effort to sell the wrench.
A. If he did, I don't know about it.
1794 Q. Would you have known about it?
A. If it were discussed in my presence. It could have been discussed during my absence.
Q. When was the first time that you know of that you made an attempt to sell the wrench?
A. The first was our discussion with Barggren and nothing was done with him, to my knowledge, and Larson and I then went to the offices of Clark.
Q. You can identify Clark?
A. I would recognize him if I met him. His place of business was on Indiana Avenue, south of 22nd Street.
Q. Did his business have a name of some kind?
A. I am not sure whether he operated under the name of Clark Tool Company or not—I am not sure.

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Q. What kind of business did he have?

A. He dealt exclusively with distribution of wrenches of all sorts used in the automotive repair business.

Q. What were your connections or attempts with respect to Clark?

A. We spent possibly two or three hours as to the possibility of his distributing the wrench, explaining the possibilities it had and that we wanted to manufacture it and have someone distribute it.

Q. What was the outcome of that?

A. There was nothing definite at that meeting other than that he was quite entimused over the wrench and thought that he could distribute large quantities throughout the country.

Q. Was there more than one meeting with him?

A. That was the only one at which I was present. I believe Larson saw him once or twice after that.

1795 Q. Did he make an attempt to distribute?

A. No, he never had the samples or anything to work with to distribute them.

Q. Why not?

A. He was also financially unable to handle the distribution problem.

Q. When was that?

A. The time of the meeting of Larson, Clark and I?

Q. Yes, when was it?

A. I believe it was about the latter part of January, 1938.

Q. What wrench did you have available at that time to demonstrate?

A. I believe it would be this one (referring to Exhibits 13 and 14).

Q. That was the second batch of wrenches made up and there was only one wrench—you only had one sample when you talked to Barrgren and Clark?

A. That's correct.

Q. After the Clark meeting fell through, did you try to get anyone else interested?

A. Larson then contacted Dawson for the purpose of distribution.

Q. Do your remember Dawson's first name?

A. I believe it is Edward.

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Q. What was his business?

A. He was distributing automotive wrenches to the various garages.

Q. Was he a machinery manufacturer's agent?

A. Distributor—manufacturer's distributor or representative. He represented the Plum Tool Company.

Q. Did he have his own business name?

1796 A. His business name was the Tool Supply Company.

Q. Do you know where that was located?

A. He operated from his own home on Windsor, a little west of Milwaukee Avenue.

Q. When was it that Larson contacted Dawson?

A. I believe that was in March of 1938?

Q. Were you along when he contacted him?

A. No, not at his first meeting. I was not present then.

Q. Do you know how many meetings they might have had.

A. I don't know.

Q. Why were you not present?

A. I don't know of any particular reason other than I just wasn't there.

Q. Were you engaged at AMMCO?

A. Unless it was done when I was at AMMCO during the day, when they first got together.—

Q. You were at AMMCO in February of 1938?

A. That's right.

Q. What was the reason of getting together with Dawson?

A. He agreed to take one or two wrenches on trial to see whether or not he could sell them and he eventually sold a total of eight wrenches.

Q. What was the arrangement with Dawson?

A. He purchased them as he wanted them for cash or C.O.D.—list price, less 50%.

Q. Do you know any of the people to whom Dawson sold wrenches?

A. I believe the only one that I know was some 1797 garage or mechanic in Evanston. The exact location I don't know.

Q. Do you know his name?

A. I don't.

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Q. Where did you get that information?

A. In a discussion that occurred between Larson, Dawson and I.

Q. Over what period of time did Dawson sell those wrenches?

A. Over a period of about two months—a total of two months.

Q. That would be through the spring of 1938?

A. That's right.

Q. Where did the wrenches come from that were sold to Dawson for resale?

A. They were made in the basement of Larson's home in Des Plaines.

Q. Who made them?

A. Larson and I made them together. He did most of the work inasmuch as he had more time.

Q. Where did the profit from those wrenches go?

A. Larson received the payment for the wrenches. I never handled or received any of the money at any time.

Q. Why was that?

A. Well, the checks were made out in Larson's name.

Q. Shouldn't he have split some of that money with you?

A. There was no understanding to that effect and I didn't mention the splitting of any of that money inasmuch as all of the money that had been paid out for materials, castings and metal was advanced by him.

Q. Why wasn't there any split of the money received for the wrenches?

A. Well, the money received represented less than 1798 enough to cover the cost of making the wrenches. Larson had paid out the money for the materials used and this money that was received was used to cover the material expense, except for metal boxes.

Q. Where did you get the materials for those wrenches? Those that were made for Dawson.

A. The castings were made by the Ravenswood Foundry and the steel came from Ludlam and the Steel Sales Corporation.

Q. What is the Steel Sales Corporation?

A. They supplied the steel for the chrome-vanadium head.

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Q. Where are they located?

A. At that time at Jefferson and Monroe Streets, Chicago, but I understand that they are now at their plant in the central manufacturing district in Chicago.

Q. Where did the gauge structure come from?

A. The first gauge structure came from various odds and ends assembled out of parts that he got from gears and pinions from the Boston Gear Company, that is for the very first wrench. Succeeding gears and pinions were secured by Larson from the Wetzig Manufacturing Company—for the ones that Dawson sold.

Q. Who handled the securing of the castings of the wrenches that Dawson got?

A. Larson.

Q. What part did you play, if any, in the manufacture of those wrenches.

A. Assisting in general machining of the wrenches and the assembling and finishing.

1799 Q. Did those wrenches differ any from the first ones?

A. Yes, somewhat—a slight change in the handle of the wrench.

Q. Any other change?

A. One particular change was that dials had been secured from the Chicago Thrift Company, to make them present a finished appearance.

Q. Metal dials?

A. Yes.

Q. What kind of dials were on the first wrenches?

A. On the very first wrench there was a cardboard or pressed paper dial.

Q. Who made that?

A. I made the first one.

Q. Did anyone see you do that?

A. No one outside of Larson saw me make the first one.

Q. What was the dial of the second wrench made of?

A. That was made by the Chicago Thrift Company and patterned after the design of this first one that I made.

Q. There was only one that had the pressed paper dial?

A. That's right.

Q. Any other difference between the wrenches that Dawson got and those previous wrenches?

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A. The very first wrench had a somewhat different dial mechanism than the ones that Dawson got.

Q. Do you see any wrench on these photographs like the one Dawson got. (Referring to Larson Exhibit 19.)

1800 A. The casing and cover plate were so arranged so that the cover plate no longer served as a bearing and that was done to improve the appearance of the wrench.

Q. Did it have anything to do with the operation of the wrench?

A. It had no material change in its operation.

Q. How do you identify Exhibit 19 as the wrench that Dawson got?

A. Well I remember distinctly that this particular design was the one used at that time and distributed by him and I believe that if the one he sold in Evanston could be located, it would be a duplicate of this one that is Exhibit 19.

Q. How about these wrenches Exhibits 31 and 37, how do they compare with the wrenches sold by Dawson?

A. I do not believe that the ones distributed by Dawson looked like that; they didn't have this bead at the handle—that bead was omitted and this style was used.

Q. After looking at this photograph, do you want to revise your previous statement respecting the wrenches that Dawson sold?

A. Yes, I believe it was 17 rather than 19 (referring to Exhibits).

Q. What was the difference between 17 and 19 that you identify?

A. This bead at the handle—that is quite prominent.

Q. What kind of aluminum alloy were those casings made from?

A. A durable aluminum alloy that would have the utmost strength in the casting form.

Q. What about the aluminum in the original casting—is there anything unusual about it?

A. Nothing that stands out in my mind.

1801 Q. Where did the metal come from?

A. It was supplied by the Ravenwood Foundry, I believe.

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Q. Do you have any recollection about Larson gathering up old pistons for the purpose of having castings made?

A. I do not know anything about that.

Q. Would you have likely known about it if he had done so?

A. If he had mentioned the fact to me, but I don't recall any discussion of that nature.

Q. Did you and Larson discuss the material to be used in the casings?

A. Yes, we discussed the fact that we wanted good aluminum castings with an alloy that would render them as strong as possible.

Q. Had you had any experience prior to that time?

A. I had considerable experience with aluminum castings at AMMCO.

Q. Now these wrenches that were sold by Dawson, were the castings ordered for them all at the same time?

A. Yes, I believe so.

Q. How many castings did it take?

A. I believe a dozen of them.

Q. How long after you got the castings was it before you had the wrenches completed?

A. Possibly two or three weeks.

Q. When was that?

A. In March or April of 1938.

1802 Q. Did Dawson sell all these wrenches before, or part of them before and part of them after the Snap-On contact?

A. All before the Snap-On contact.

Q. What was the name of the man at Snap-On that was a relative of Larson's?

A. William Sharon. He was in the office up there.

Q. He is a brother-in-law of Larson's?

A. I do not know the exact relationship—whether a brother-in-law or a cousin, or what.

Q. It was through him that Larson made his contact with Snap-On?

A. Sharon introduced him, I believe, to Johnson at Snap-On. I was not present at that meeting.

Q. After Dawson sold a few wrenches, did he contact anyone else in an attempt to sell wrenches?

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A. Yes, an attempt was made by Larson to have the Federal Mogul Bearing Company of Detroit distribute the wrenches. They have a branch office in Chicago, although their main office in in Detroit.

Q. Who is the man that they contacted there?

A. I do not know his name in Chicago or elsewhere.

Q. What became of that?

A. Larson received a letter from him saying that they were not interested in the distribution of a wrench.

Q. Did you contact them at all with Larson?

A. No, I had nothing to do with that.

Q. Why was that?

A. That was done during the day and I was engaged in my work at AMMCO and was not free.

1803 Q. Was any other attempt made to interest anyone in the wrench?

A. Not to my knowledge. Oh, yes, a party by the name of Stone—somewhere near Irving Park.

Q. What kind of business was he in,

A. He was a manufacturer's agent.

Q. Where were his offices?

A. At his home.

Q. Any idea of his first name?

A. I think I can get that from a jobber that knows him. I will try to get it.

Q. What kind of business was it?

A. Principally the distribution of Thexton piston expanders.

Q. What were the dealings with Stone?

A. Larson was confident that he could interest him and that he would be of value to us in the distribution inasmuch as he was financially able to handle something of that kind.

Q. Did you talk to Stone too?

A. Yes. I talked to him in our discussions.

Q. Did you show him anything.

A. I showed him the tension wrench in Larson's basement.

Q. What kind was that?

A. One just like those distributed by Dawson.

Q. Did you contact Stone before or after Dawson?

A. After meeting Dawson.

Q. Did you contact him during the time Dawson was selling?

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A. During the time Dawson was selling—we were playing both parties.

1804 Q. Did you sell a wrench to Stone?

A. No. Stone never purchased one or took a sample or made any attempt to sell or distribute them to my knowledge.

Q. Did the deal fall through?

A. Nothing ever came of it.

Q. Now those wrenches sold by Dawson. Did they bear any marking of any kind.

A. The wrenches sold to Dawson were marked with a serial number in code.

Q. What was that code.

A. The one used by a concern I was formerly connected with, namely, the Chicago Machinery Exchange.

Q. The very first wrench that you made and sold to Dawson, did that have a marking "FOF" so that it would be No. 101, so that "FOG" was the 6th wrench that you sold to Dawson?

A. That's right.

Q. "FOU" was the seventh wrench?

A. That's right.

Q. And "FOX" was the ninth wrench?

A. That's right.

Q. How about the wrench that Larson sold to Ladendorf. How did it compare with the wrenches that were sold to Dawson?

A. I believe it was the same in every respect.

Q. Part of the same batch or a different batch?

A. From the same batch of castings.

Q. Did it have a code marking?

A. I believe it did. If it didn't, it should have had.

Q. What was the purpose of that code marking on the wrenches?

1085 A. To identify them in serial number form. The code marking represents serial numbers.

Q. Why did you want to do that?

A. So that we could always keep a record of the wrenches that we sold when they were made, when they were shipped and to whom they were shipped.

Q. For repair and replacement purposes?

A. And to give us a definite idea how long they were out in the field.

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Q. I haven't previously told you anything about Larson's testimony?

A. Not a word.

Q. And the information you have just given me is entirely voluntary?

A. That's right.

Q. Why did Dawson quit selling?

A. Well, he had sold all that he thought he could sell in his territory and to reach out farther in the field would require the spending of money on one form or another, either in advertising or in sending someone out to sell them or to try to sell them.

Q. Where does Snap-On enter the picture?

A. Well, when the letter was received by Larson from the Federal Mogul Company informing him that they were not interested in distributing a wrench of that type, Larson then contacted the Snap-On Company through his relative who was with that company.

Q. The contact of Larson with Snap-On was, I understand, entirely his own idea.

A. That's right.

Q. Did you have any ideas about not contacting or contacting Snap-On?

A. No, in fact I was not in favor of contacting Snap-On until we had consulted a patent attorney and first 1806 determine whether or not we were on sold ground.

Q. Did you suggest such a thing?

A. Yes, I suggested it and was very much in favor of doing it; however it was merely talked about and postponed.

Q. Did Larson agree to it?

A. Larson was in agreement with it and he could appreciate what I had in mind; that it was to protect our interests and to know just what our position was to manufacture and supply the wrenches to anyone that might want to distribute them in large quantities.

Q. Why didn't you do it then?

A. Well, there are two definite reasons. One was that we weren't financially able to pay the cost of such a thing and we were so deeply absorbed in making a few and working on them that it was just postponed and postponed.

Q. Who did you have in mind contacting for that advice?

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A. The man that I suggested was Joshua Potts of Chicago.

Q. Did you ever contact a patent attorney for advice?

A. No, we never did.

Q. Did Larson ever contact an attorney for advice that you know of?

A. Not to my knowledge.

Q. You mean that nothing like that was done, then, prior to the time you contacted Snap-On?

A. That's right.

Q. Was there any change in Larson's attitude in that connection, after contacting Snap-On and, if so, what was it?

A. After his first interview with Snap-On, it was then arranged that they would consult their patent attorney inasmuch as he told them, I believe, that he didn't
1807 have the money to engage a patent attorney.

Q. Whose patent attorney?

A. Any patent attorney. I mean that he had told Snap-On that he could not afford to engage a patent attorney and then Snap-On arranged a meeting with the Snap-On patent attorney, who is Harry Alberts in Chicago.

Q. You were advised of that by whom?

A. By Larson.

Q. What was the purpose of Larson seeing Alberts?

A. To determine whether or not the tension wrench was patentable and would not conflict with any other existing tension wrenches, of which there were a number in existence.

Q. Was an investigation made?

A. I believe an investigation was made by the Snap-On attorney.

Q. Alberts?

A. Yes—at least I am of that impression.

Q. Were you ever told of the outcome of the investigation?

A. Briefly, the only definite information I received was that the patent application to be made on that tension wrench was for an improvement of the tension wrench. There was some discussion about the difference between the application for a basic patent and an improvement of a tension wrench.

(Notarial Seal) 11-15-40 G. B. T.

A. That's right.
Q. What was that improvement?
A. Well, I never saw any of the written details on it.
Q. Was it the tail piece or reduced end extension on the spring bar?
1808 A. Yes. The manner in which the dial reading was taken on the spring bar.
Q. Who told you about that?
A. Larson.
Q. You never saw the application?
A. I never saw any written details concerning the application.
Q. How did Larson happen to tell you about it?
A. When we discussed the matter after his meeting with Alberts, I was interested to know whether or not it was O. K. to go ahead and manufacture the wrench and he was sure that Alberts had approved it and said that it was O.K., and he felt that, he being in the business and had many years' experience, was correct and accepted it as that.
Q. Who paid for the preparation and filing of that application?
A. At that time there was no payment made by anyone that I know of, unless the Snap-On Company paid for it.
Q. That particular improvement that was covered by the application, whose improvement was that? Who made the suggestion respecting the reduced end piece connecting with the gauge?
A. Larson made that.
Q. Therefore, it was proper for the application to be filed in his name?
A. That's right.
Q. Suppose that the application was to have covered just the idea of the head-piece and the straight spring bar, one end fixed to the head piece and the other end connected to the casing by a swivel in which the spring bar
1809 would slide, in whose name should such an application as that have been filed?
A. Really, that should have been filed in my name.
Q. It is because of the end of the spring bar being fitted directly into the head member—
A. That was my idea.

(Notarial Seal) 11-15-40 G. B. T.

Q. Suppose that application had covered merely the idea of a rotatable head member in the casing and a spring bar connected at one end to that head member in some way through a forging or any other way, broadly, with a swivel at the other end and the spring bar sliding in it, in whose name should that application be filed?

A. That, in my opinion, would be the property of the Automotive Maintenance Machinery Co., and Zimmerman, as engineer, would be the inventor of the same.

Q. Then, in your mind, it was perfectly proper for Larson to file the application in his name if he limited it to that improvement that they had decided was patentable?

A. That's right.

Q. I call your attention to the casting and cover Exhibits 9 and 10 and ask you whether you know anything about them.

A. Well, 9 and 10 appear to me to be the very first castings made from the very first pattern made.

Q. The patterns, Exhibits 6, 7 and 8?

A. That's right.

Q. When were they made?

A. The last week in November, I believe, in 1937.

Q. In any event, after that oversized piston fixture was bought?

A. That's right.

1810 Q. Now, I call your attention to the casing, Larson Exhibit 11, and the cover, Exhibit 12. Did you ever see them before?

A. Yes, they are also from the very first castings made. No. 11 represents what is left of the body of the casting made from pattern No. 6, with the rest of the handle having been broken off.

Q. Do you know anything about that handle being broken off?

A. I didn't see it happen but I understand the casting was thrown on the floor deliberately to see whether or not it would break from misuse or rough treatment.

Q. Why was such a test as that made?

A. Purely out of curiosity to determine whether or not it would hold up—by holding it up in mid-air and then dropping it on the cement floor to see if it would break.

Q. Does Sturtevant of Glen Ellyn enter that picture anywhere?

(Notarial Seal) 11-15-40 G. B. T.

A. That was how the dropping of the wrench happened. Larson had been with me in Sturtevant's plant. Sturtevant was demonstrating his torque wrench and telling how he would hold his wrench and a competitor's wrench side by side in mid-air and his sales talk to his prospect was that if he would let go of both wrenches, after they hit the floor, which one the prospect would want to pick up—merely to convey the impression of the stability and strength of his torque wrench.

Q. And Larson was trying to make some of the same tests with this wrench?

A. It was a re-enactment of this same thing that Larson was doing when he broke that wrench.

Q. Did you see that done?

A. No I didn't.

1811 Q. How did you learn about it?

A. I learned of it when he told me about it the evening of that day when he went through that procedure, or the following day.

Q. You saw the broken wrench?

A. Yes.

Q. Did you ask him about it?

A. He volunteered the information and told me about it.

Q. Did you have any more castings available after you broke that one.

A. No, not of that pattern, because that pattern was then in the discard, so far as usage was concerned. We were already using the other pattern that he made.

Q. Do you know anything about the fixing of a file on the casting of Exhibit 9?

A. Using it as a file holder, yes. That is still in existence. He used a sharp file and bolted it to the casting and used that casting as a handle or a holder to file other wrench castings.

Q. Why did you want to file other castings?

A. To smooth their surface and get the sand marks off.

Q. Where was that file kept?

A. Among the tools at the K & L Shop, and from there it was moved to Larson's basement.

Q. Do you know anything about the wrench castings, Exhibits 13 and 14?

(Notarial Seal) 11-15-40 G. B. T.

1842 A. 13 and 14 are identical, except 14 has a number of drill point marks on the grip in the handle to determine whether that would make a more desirable handle to hold in the hand.

Q. Who suggested that?

A. I am not sure who suggested that?

Q. Did Ford suggest it?

A. I don't remember.

Q. Barrgren?

A. I don't think he had anything to do with it.

Q. You didn't, did you?

A. No, the minute I saw it, it didn't appeal to me in appearance, I saw that particular handle after it was finished that way.

Q. I am referring to the wrench of Exhibit 13; did you ever see that before?

A. I believe that is the one that we first showed to Clark on Indiana Avenue in assembled form in January or February of 1938.

Q. Do you know anything about the wrench of Exhibits 15 and 16?

A. That is the same as 14, except for the marking on the handle—the drill point marks.

Q. Do you know anything about the making of that?

A. That was made at the same time as No. 13.

Q. Did you help make it?

A. I did.

Q. That was in the early part of 1938?

A. In January of 1938.

Q. Do you know anything about these spring bars, Exhibits 40, 39, 41 and 28?

1843 A. Yes, they represent the first spring bars that we used and No. 28 would be the one that was used in the casing No. 13 that was shown to Clark.

Q. When were they made?

A. They were made in January of 1938.

Q. How about the bar 40 which is broken off at one end?

A. Yes, that was also probably assembled into No. 13 and was broken and then removed and replaced with No. 28.

Q. Did you ever see it before that you remember?

A. I saw it at the K & L Shop.

(Notarial Seal) 11-15-40 G. B. T.

Q. How about at Larson's basement?
A. Yes, he had it there.
Q. How about No. 39, did you ever see that before?
A. Yes, that was turned down on the end and whether it was ever used in a wrench or not, I am not certain.
Q. You don't remember seeing that before?
A. I remember seeing it.
Q. Did you have anything to do with the making of it?
A. I think I turned the O.D. on it but whether it was ever assembled to be used, I am not sure.
Q. When was that?
A. In January, 1938.
Q. Did you ever see Exhibit 41 before?
A. That represents one of the first spring bars made.
Q. Anything peculiar about it?
A. The end is turned down and there was another piece slipped on the other end of it.
1814 Q. Did you have anything to do with that?
A. Larson made that.
Q. When was that?
A. January, 1938.
Q. Do you know anything about Exhibit 28?
A. Yes, that was adopted with a hole bored in the end and the extension pressed into it.
Q. Did you have anything to do with that one?
A. I believe I turned the O.D. (outside diameter), on the spring and put the hole in it.
Q. When was that?
A. I believe that was in January 1938.
Q. In any event, all of this occurred in January 1938 and subsequent to the time that the piston fixture was bought?
A. That's right.
Q. Now look at the gauge device, parts of which are shown on the photograph in front of you, and see if you recognize anything about any of these.
A. No. 46 was first used or applied to casting No. 13, I believe.
Q. Who made it?
A. Larson made it in January, 1938.
Q. How about the others?
A. 28A and 32 were made probably early in March of 1938 by Larson. I did some hand work on them.

(Notarial Seal) 11-15-40 G. B. T.

Q. Do you see any others that you are familiar with?

A. 43 is almost identical with 33. 44 represents a change in the T-shaped plate.

1815 Q. Did you have anything to do with 43 or 44?

A. Yes, we worked together on those.

Q. When were they made?

A. I believe in March of 1938.

Q. How about the casing ring that was knurled and used on those gauges?

A. First they were made of brass tubing.

Q. Who made them?

A. I made some and Larson made some on the lathe in his basement.

Q. How about Exhibit 33?

A. That represents the finished part made by the Wetzig Manufacturing Co.

Q. Did you have anything to do with the designing of it?

A. Yes, I worked with Larson on the design of that.

Q. Did you first meet Carlson, who is now one of the officers of Precision?

A. The occasion on which I first met him?

Q. Yes.

A. The first time I ever met him was in my brother-in-law's tavern on the outskirts of Des Plaines.

Q. When was that?

A. I can't fix a date right at this moment.

Q. Do you know how Carlson happened to meet Larson?

A. Yes, I introduced Carlson to Larson.

Q. When was that?

A. I believe in November of 1938.

Q. How did that come about—what were the circumstances?

1816 A. We were leading up to the manufacture of wrenches for the Snap On Company and needed capital for the purchase of material and Larson had failed in raising money to proceed with and I had no money available and Larson felt that I should mortgage my home to raise sufficient money to finance the manufacture and he located a man with money to loan who would loan money to me on my home on a first mortgage arrangement. All this he arranged on his own accord and the first that I

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knew of it—or what had really transpired—was when this man and his wife called at my home to look the home over to determine whether or not he could loan the money on a mortgage.

Q. You refused to go through with any such thing?

A. He advised against borrowing money on the home for a business venture.

Q. Then what happened?

A. Several attempts were made by Larson to secure money for the purpose and he was unable to accomplish anything that we then, that is, Mrs. Thomasma interested Mr. Carlson in the possibility of a corporation setup.

Q. And as a result of that?

A. As a result of that, I then introduced Larson to Carlson in November and the three of us discussed setting up a corporation to manufacture tension wrenches.

Q. The patent application had already been filed at that time?

A. Yes.

1817 Q. Larson's personal contract with Snap On had also been signed?

A. That's right.

Q. Are you sure that that personal contract of Larson's was eventually assigned to the company?

A. I don't know.

Q. You don't know?

A. There was a contract arranged then, but I was not present: Carlson and Larson went to the Snap On offices in Kenosha and sat in conference with the officers and arranged for a contract.

Q. Would that assignment show in the books of the minutes of the company?

A. There were few minutes in the book until my lawyer came along.

Q. Is there any way we can determine that fact definitely?

A. Only through his testimony.

Q. You have not participated in any of the regular business of the Precision Instrument Company since it was organized.

A. No, except to appear at the stockholders' meetings and to sign such papers as absolutely necessary.

Q. What papers have you signed?

(Notarial Seal) 11-15-40 G. B. T.

A. The corporation papers for the purpose of incorporation and some papers demanded by the bank. They stalled that off for a long time but I believe there was an understanding. The bank demanded signatures and counter-signiatures. For a long time no one but Carlson signed checks and I think the only way he stalled them off for my signature was by saying that I was absent and that he couldn't contact me. That can be checked by the 1818 bank officials.

Q. That can be checked by the bank officials to see whether that is the fact?

A. It was quite a late date—I can't just say. I believe it was sometime during the winter of 1939 (late) that he trailed me at the house and I was not at home and then I think he left the papers at my house for me to sign and return to him in connection with this signature and counter-signature arrangement at the bank.

Q. Do you know why you were kept out of the picture at Precision?

A. Well, the reason that they gave me and the reason they gave to the stockholders at the meeting of July 31, 1940 was that my presence in the shop or the plant would put the company in a precarious position in relation to the existing patent situation and, also, there was the understanding with the Snap-On Company that I, as an employee or ex-employee of one of their competitors, would also put them in a precarious position and hurt the company.

Q. The reason, of course, that you got the same number of shares of stock as Larson got originally, even though he put in the patent application, was because of your prior arrangement with Larson with respect to the wrench?

A. And also Carlson's sentiment that we should share alike inasmuch as we started the project together.

Q. Carlson was in full accord of your shares being alike and it was to their interest to keep you satisfied in that respect?

A. Yes.

Q. Otherwise, you might go back to Automotive with the matter?

A. They might have sensed that or suspected it.

1819 Q. Did you ever have any idea about taking this idea to Automotive while working with Larson?

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A. I did suggest it to Larson one time that he might succeed in interesting Mr. Wacker if he took it to him as an outsider and would have more success with Mr. Wacker than I would have.

Q. That was not done with any thought of misleading Mr. Wacker, was it?

A. No.

Q. It was only with the thought that you would get an audience with him more readily and without embarrassment, than if you were to do it yourself?

A. That's right.

Q. You also hoped, I understand, that, since you thought you had a very fine idea, that maybe Mr. Wacker would think it was a better wrench than his and that you might be able to make some kind of a deal with him?

A. That's right.

Q. There are several of the foregoing facts that Mrs. Thomasma can substantiate?

A. That's right.

Q. For example, the meeting of Larson and Carlson?

A. The arrangement of the meeting of Larson and Carlson.

Q. And there are certain things that your brother can substantiate, for example, the drawing and your own work on the wrench?

A. That's right.

Q. Mrs. Thomasma can substantiate that you 1820 were away from home a lot and what you were doing?

A. That's right.

Q. Now, all of this information has been given to me voluntarily?

A. Of my own accord, that's right.

Q. And information that you have given about details of the wrench has been given out voluntarily on your part—through questioning to determine, first, whether or not you know the facts?

A. That's correct.

Q. You have given me all of this information with the thought of testifying on behalf of the party Zimmerman in this interference?

A. That's correct.

Q. And you have given all of this information without

(Notarial Seal) 11-15-40 G. B. T.

any hope of reward or remuneration of personal gain now or at any time in the future?

A. That's right.

Q. I understand that your feeling in the matter is that if you do not tell the true situation you may thereby harm Mr. Fred G. Wacker, who is the head of AMMCO and a personal friend of yours, when you have no intention to and never have had any intention to injure Mr. Wacker or his company in any way?

A. That's right.

1821 I further depose and voluntarily say that at 10:00 o'clock of the morning of November 12, 1940, Walter Carlson, Secretary and Treasurer of Precision Instrument Manufacturing Company, called me, saying that he and Larson wanted to see me around noon. I arranged to meet them at that time. Upon meeting them, we went to the Hack Machine Co. at 1228 Harding Avenue in Des Plaines. We sat in Larson's car and the following discussion was had.

They first suggested that my attorney had sold out to Automotive Maintenance Machinery Co., the owner of the Zimmerman application in the interference, as Harry C. Alberts, Larson's attorney, had written them (Larson & Carlson) a letter. They then produced the letter and I read it. The letter stated in effect that the writer, Alberts, had received a telephone call suggesting that their testimony given in the interference was false, that Alberts wanted an explanation as to whether it was or not, and if an explanation was not had he would have to drop from the case. It was further stated in the letter that my attorney had suggested that I had been interested in the invention and development of the torque measuring wrench manufactured by the Precision Instrument Manufacturing Company and Alberts again asked for an explanation. The letter concluded by stating that Alberts is now in the East and would be back Friday.

Carlson and Larson then attempted to secure my consent in that I would sign a statement to the effect that I had

1822 nothing to do with the invention and development of the torque measuring wrench of the Precision Instrument Manufacturing Company. They explained to me that if I did not, they might just as well give up and sell out to Snap-On. I told them that I would not do any-

(Notarial Seal) 11-15-40. G. B. T.

think like that and that many people could swear that I had been instrumental in the invention and development of the torque measuring wrench manufactured by the Precision Instrument Manufacturing Company. Larson inquired as to who these people were. I then mentioned a few names but Larson said they wouldn't talk. After I had mentioned Dawson's name, Carlson said I should not worry about him as he had been taken care of.

Before leaving me, Larson and Carlson said they will call a Director's Meeting and then advised me that they would send me a written notice of it. They further suggested that if I did not sign the statement that I had nothing to do with the invention and development of the torque measuring wrench manufactured by Precision Instrument Manufacturing Company, that the only thing they could do was to have a stockholders' meeting, give the story to the stockholders, and advise them to sell out to Snap-On.

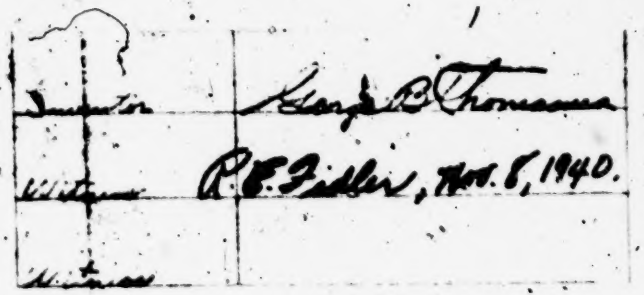
My reaction in regard to the conduct of Carlson and Larson was that they were very definitely scared regarding the possible consequences that might result from their past conduct.

George B. Thomasma.

Subscribed and sworn to before me this 15th day of November, 1940.

Thos. Marsicano,
Notary Public.

(Seal)



FILED

AUTOMOTIVE MAINT. MACH. CO.
vs.
DRESSER IND'S, INC., ET AL.
CIVIL ACTION NO. 4868
DEF. EXH. NO. 22-A

1013

1826 DEFENDANTS' EXHIBIT NO. 26.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

	647.85
	75.90
	154.70
	148.80
	177.90
	176.70
	167.85
	168.85
	117.90
	118.90
	118.90
	121.90
	119.85
	131.90
	245.75
	179.90
	293.95
	276.85
	317.65
	376.80
	378.85
	186.70
	4,704.35

1827 (Letterheads of John A. Wise & Son, Chicago, Ill.)

August 17th, 1940.

Services up to & Including 8/17/30	90.00
Expense & Prefex up to & Including 8/17/40	557.85
	647.85
Acknow by Cash	500.00
	$147.85

O. K.
R. E. F.
8/19/40.

1828 Automotive

August 10th, 1940.

Services up to & Including 8/10/40, 4 days	60.00
Expense up to & Including 8/10/40—Pretex—Transportation to & From Des Plaines	15.90
	75.90

O. K.
R. E. F.
8/13/40

1829 August 31st, 1940.

Services up to & Including 8/31/40	90.00
Expenses up to & Including 3/31/40	64.70
	$154.70

Accounts Payable

1830 August 24th, 1940.

Services up to & Including 8/24/40	90.00
Expenses up to & Including 8/24/40	58.80
	148.80

Accounts Payable

1831 Automotive

Sept. 7th, 1940.

Services up to & Including 9/7/40	90.00
Necessary expense & Pretex to & Including 9/7/40	87.90
	$177.90

J. A. W.

1832 Automotive

Sept. 14th, 1940.

Services up to & Including 9/14/40	90.00
Expenses up to & Including 9/14/40 Including all hotel—Meals—Transportation & Pretex both in Chicago & Des Plaines	86.70
	$176.70

J. A. W.

1833 **Automotive**

Sept. 21st, 1940.

Services up to & Including 9/21/40	90.00
Expenses up to & Including 9/21/40 including all expense at Des Plaines—Chicago & Pretex	77.85
	167.85

J. A. W.

1834 **Automotive**

Sept. 28th, 1940.

Services up to & Including 9/25/40	$90.00
Expenses & Pretex up to & Including 9/25/40— no charge made for my services and that of fill in men & women to cary in pretex	78.85
	168.85

J. A. W.

1835 **Automotive**

Oct. 5th, 1940.

Services up to & Including 10/5/1940	90.00
Expenses up to & Including 10/5/40	27.90
	117.90

1836 **Automotive**

Oct. 12th, 1940.

Services up to & Including 10/12/40	90.00
Expenses up to & Including 10/12/40	28.90
	$118.90

J. A. W.

1837 **Automotive**

October 19th, 1940.

Services up to & Including 10/18/40	$90.00
Expeses up to & Including 10/19/40	28.90
	$118.90

J. A. W.

1838 Oct. 26th, 1940.

Services up to & Including 10 26 40	90.00
Expenses up to & Including 10 26 40	31.90
	121.90

J. A. W.

1839 Automotive

Nov. 2nd, 1940.

Services up to & Including 11 2 40	90.00
Expenses up to & Including 11 2 40	29.85
	119.85

J. A. W.

1840 Automotive

Nov. 9th, 1940.

Services up to & Including 11 9 40	90.00
Expenses up to & Including 11 9 40	41.90
	131.90

J. A. W.

1841 Automotive

Nov. 16th, 1940.

Services up to & Including 11 16 40	90.00
Expenses up to & Including 11 16 40	47.90
Pretex Expenses	107.85
	$245.75

1842 Automotive

Nov. 23rd, 1940.

Services up to & Including 11 23 40	90.00
Expenses & Pretex up to & Including 11 23 40	89.90
	179.90

1843 Automotive

Nov. 30th, 1940.

Services up to & Including 11, 30 40, 2 men	$180.00
Expenses & Pretex. Lunches & pay given to Mr. & Mrs. Thomasma Including gas—storage	113.95
	$293.95

Expenses of men. No charge made for my service or the other two persons.

J. A. W.

Accounts Payable

1844 Automotive

Dec. 7th, 1940.

Services up to & Including 11 7 40, 2 men	$180.00
Expenses up to & Including 11 7 40	96.85
	$276.85

1845 Automotive

Services up to & Including 12 14 40, 2 men	180.00
Expenses & Pretex. car—Pay—Meals for G. T.	137.65
	317.65

J. A. W.

1846 Automotive

Dec. 21st, 1940.

Services up to & Including 11 21 40, 2 men	$180.00
Expenses including Hat & belong for G. T. Expense of Pretex for information	196.80
	376.80

J. A. W.

1020. *Defendants' Exhibit No. 27.*

1847 Automotive

Dec. 28th, 1940.

Services up to & Including 12 28 40, 2 men	180.00
Expenses— including time & Expense of G. T.	
Notary service & ch.	198.85
	$378.85

J. A. W.

1848 Automotive

Jan. 4th, 1941.

Services & Expenses in Full up to and Including 1 4 1941	$186.70

1849 DEFENDANTS' EXHIBIT NO. 27.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

I, George B. Thomasma, hereby acknowledge receipt of one AMMCO shaping Machine and the sum of Two Hundred Dollars ($200.00) as compensation and reimbursement in full to date for all services, disbursements and expenses rendered, made or incurred by me for or on behalf of Automotive Maintenance Machinery Co., of North Chicago, Illinois, in respect to torque wrenches, cylinder surfacing tools, and other articles or devices manufactured and sold by said Automotive Maintenance Machinery Co., and upon which I may have worked from time to time to date hereof.

In accepting this compensation, it is understood by me, and I agree, that I will not hereafter incur any expense of any name or nature for or on behalf of said Automotive Maintenance Machinery Co. without the consent of said Automotive Maintenance Machinery Co.

George B. Thomasma.

Park Ridge, Illinois.
June 27, 1942.

1850 **DEFENDANTS' EXHIBIT NO. 28.**

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

April 1, 1941.

Mr. George B. Thomasma
1121 Potter Ave.,
Park Ridge, Illinois

Dear George:

I am in receipt of a letter from Mr. Fidler dated March 24 with which he submitted the following:

One original drawing covering power drive details.

One original drawing showing mark for power drive.

One original drawing dated October 10, 1940, covering a power drive casing.

One power drive model.

One original drawing of a universal valve tool.

One model cylinder resurfacing tool body with universal drive connection.

One photostatic copy of cylinder resurfacing tool drawing. I will comment on the separate items as follows:

Power Drive for boring bar of line boring tool:

We are not interested in this item because it provides a right angle drive, and furthermore, we doubt its patentability because it is similar to many conventional worm gear speed reducers now on the market.

We have found that the vibration is due primarily to the vibration of the electric drill and not because of our power drive. Furthermore, when boring the operator likes to stand in line with the boring bar instead of at right angles for reasons that you will readily recognize.

1851 Cylinder resurfacing tool:

This item is interesting to us and we are keeping this model resurfacing tool body and the photostatic copy of the drawing of same for further study.

Our present surfacing hone has a range of from 2 11 16" to 4 1 8". Please let me know what you estimate the range of your surfacing hone will be.

Another problem to be worked out is how to avoid cutting on one edge of the stones in the very small diameters and on the other edge of the stones in the larger diameters.

Still another problem in this connection is that your tool is laid out as a three stone tool which will not permit the use of impregnated felts for lubrication, which would not provide a good finish unless a lubricant was added during the operation.

Your suggestions with respect to these problems will be appreciated.

Universal Valve Tool:

We do not consider that this valve tool is in our line. It may be an excellent tool but as you know we are not in a position to sell a single valve tool inasmuch as we do not manufacture and sell a full line of valve tools. Accordingly, we suggest that you submit this tool to any one of a number of companies with whom you are familiar who manufacture a line of valve tools.

Accordingly, we are returning to you under separate cover the following:

One original drawing covering power drive details.

One original drawing showing mark for power drive.

One original drawing dated October 16, 1940, covering a power drive casing.

One power drive model.

One original drawing of a universal valve tool.

1852 As previously stated we are retaining for further study the following:

One model cylinder resurfacing tool body with universal drive connection.

One photostatic copy of drawing of resurfacing tool.

We are very anxious to have another good cylinder resurfacing tool to offer to the trade as a premium item and we hope that your suggestions and our own on this particular tool can be developed to a successful conclusion.

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.

By Fred G. Wacker, *Pres.*

fgw ms

1853 DEFENDANTS' EXHIBIT NO. 29.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.
April 16, 1941.

Mr. Fred G. Wacker
2100 Commonwealth Ave.
North Chicago, Ill.

Dear Mr. Wacker:

I am in receipt of your letter dated April 1. I am pleased to note your comment on drawings and models sent thru Mr. Fidler. I am sorry my power drive can not be patented, Mr. Fidler assures me I will be reimbursed for time and material.

The range of my surfacing hone is 2½" to 4½".

I believe springs can be shaped to reduce corner wear on stones to a minimum.

Experiments with impregnated felt and abrasive stones, combined will prove satisfactory.

In a recent telephone conversation with Mr. Fidler I mentioned your letter, Mr. Fidler promised to arrange a conference as soon as his plans will permit.

1854 I have several ideas I will submit for discussion.

Thanking you I am,

Yours truly,
George B. Thomasma.

1855 DEFENDANTS' EXHIBIT NO. 30.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

April 21, 1941.

Mr. Geo. B. Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Replying to your letter of April 16 will state that we are only interested in the development of tools or products that we can add to our line and we have never had in mind that you would go ahead with experiments that we had

not authorized and then have you expect to be reimbursed for the cost of these experiments.

As previously stated, however, we are definitely interested in making an arrangement with you on any new developments that will be of commercial value to us.

In this connection we are very much interested in the development of your surfacing hone. In your lettter of April 16 you state that the range of your surfacing hone is 2½" to 4".

I turned the body and drawings of this tool over to one of our engineers and asked him for his suggestion of a suitable spring to give your surfacing hone the same range as our own. Our range as you will recall is from 2 11/16" to 4 1/8".

After making a number of layouts our engineer reported that in his opinion it would require four sets of springs that would have to be put on and taken off for different diameters to cover the full range above mentioned.

Accordingly, we will appreciate receiving from you a sketch of a suitable spring to cover the range mentioned in your letter as we, frankly, don't know how to work it out.

You have no doubt studied this situation and have some definite ideas in mind; and we will be glad to com-
1856 plete and test the tool if you will give us a sketch of a spring that will layout satisfactorily on paper to cover the full range without taking all the wear on the corners at the low and high points of expansion.

Incidentally, I am wondering what Precision is doing by way of manufacturing wrenches and whether or not they have developed a new model of wrench.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,
Pres.

fgw ms

1857 DEFENDANTS' EXHIBIT NO. 31.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 4, 1941.

Mr. George B. Thomasma
1121 Potter Ave.
Park Ridge, Ill.

Dear George:

Just a line to acknowledge receipt of model Cylinder Surfacing hone which you submitted to Mr. Fidler and which he in turn sent to me.

This tool looks very much better than your first one and I hope that the details can be worked out with respect to satisfactory performance and also that it will be possible to secure some reasonably good patents claims on it.

Off hand, neither Mr. Fidler or I remember having seen any patents on a tool like this one.

In any event, we are going to get busy on it right away and will keep you advised of developments.

Very truly yours,
Automotive Maintenance Machinery Co.
By
President.

FGW:BLM

1858 DEFENDANTS' EXHIBIT NO. 32.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 21, 1941.

Mr. George B. Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Enclosed is a copy of our self-explanatory letter of even date to Mr. Fidler regarding your Cylinder Surfacing Tool.

Very truly yours,
Fred G. Wacker,
Pres.

ms
enc.

1859 DEFENDANTS' EXHIBIT NO. 33.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 25, 1941.

Mr. George B. Thomasma.
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Mr. Fidler wrote me telling me of your letter of June 24 and I hasten to put your mind at ease.

We are all very much impressed with your Cylinder Surfacing Tool and we feel confident that it will work. Of course, in the final analysis, the proof of the pudding is in the eating. We are not attempting to redesign your tool. We realize fully that your tool was merely a model; and we are merely going to try to build a working tool along substantially the same lines but of sufficient strenght for service.

We may want to change the universal joint but that should have nothing to do with the patentability of your tool and we hope that by cooperating with you we will be successful in securing a patent under which in turn we anticipate receiving an exclusive license from you.

We will not under any circumstances attempt to design around your development or to rob you of anything to which you are fairly entitled. To do that would constitute buying another ticket to a lawsuit, which as you know, is contrary to our policy.

If your surfacing tool works out satisfactorily and we can secure reasonable patent claims on it and if you are willing to be reasonable we hope at that time to be able to work out an arrangement with you that will be entirely agreeable to you.

We further hope that you will continue to submit your new developments to us.

Very truly yours,
Automotive ~~Maintenance~~ Machinery Co.
By Fred G. Wacker,
Pres.

fgw ms

1860 DEFENDANTS' EXHIBIT NO. 34.

(Letterhead of Davis, Lindsey, Smith & Shounts, Chicago.)

July 2, 1941.

Mr. Fred G. Wacker
Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois.

Dear Mr. Wacker:

I enclose a copy of a letter dated June 30th just received from Mr. Thomasma respecting the various matters that he has had up with you. I believe you will find this letter self-explanatory.

Very truly yours,
R. E. Fidler.

F:J
Enclosure

1861 DEFENDANTS' EXHIBIT NO. 34-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Illinois
June 30, 1941.

Mr. R. E. Fidler
332 So. Michigan Avenue
Chicago, Illinois.

Dear Mr. Fidler:

I have your letter of June 27 with my drawings.

Mr. Wacker wrote two letters on June 25th one, I am pleased expresses his sentiments regarding my model hone also my efforts in this direction.

The other a request for information. I will gladly do all I can secure all information and forward same to him at once.

I know of no person I would rather submit my developments to and if they appeal to him I assure you again Mr. Wacker has first choice.

Thanks again.

Very truly yours,
(Sgd.) George B. Thomasma.

1862 DEFENDANTS' EXHIBIT NO. 35.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

July 8, 1941.

Mr. George Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Replying to your letter of July 1 I will be glad to meet you at the factory in North Chicago some evening if you will first telephone me for an appointment a couple of days in advance.

I have been out of the city a great deal and I get into Chicago only occasionly. I might be able to meet you in Chicago late some afternoon, if that would be more convenient.

I almost always have lunch at the factory during the noon hour so that would be a good time for you to telephone me.

With kindest regards,

Very truly yours,
Fred G. Wacker,
Pres.

fgw/ms

1863 DEFENDANTS' EXHIBIT NO. 36.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

July 28, 1941.

Mr. George Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Supplementing our recent conversation in which you suggested the possibility of developing a simple type of Tension Wrench with a built-in ratchet, will state that for the time being at least it is necessary for us to standarize on the wrench models that we have in view of the demand upon us.

In other words, we are not now in a position to bring

out and manufacture a variety of different models; but we may be interested at some future date, so let's not forget it.

With kindest regards.

Very sincerely,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,
President.

FGW/LP

1864 DEFENDANTS' EXHIBIT NO. 37.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.
March 25, 1942.

Mr. F. G. Wacker.
490 E. College Rd.
Lake Forest, Ill.

Dear Mr. Wacker:

About a month ago I called at your home to discuss my tension wrench with you, as I have not heard from you I wonder if you gave this matter your attention.

I hope I am not over enthused but I believe if P. I. M. Co. (New Deal Parlance) can make and sell their present model at a nice profit, I am confident my design should net me a good return.

If your plant is too busy to handle this perhaps something can be worked out, that I could help make this a success.

Please let me hear from you regarding this tool.

Truly yours,
George B. Thomasma.

1865 DEFENDANTS' EXHIBIT NO. 38.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.
April 1, 1942.

Mr. F. G. Wacker
Arlington Hotel
Hot Springs, Ark.

Dear Mr. Wacker:

Thanks a lot for your letter.

The sketch I showed you of my tension wrench did not show an adjustment but I believe I did say, if I were to make them I would provide for adjustment.

I would like to make wrenches but I do not have money or equipment to proceed with this.

If I had a small shop I am sure I could enjoy a fine income.

I will try to make some test models and I will be pleased to show them to you.

With my best wishes for your good health.

Truly yours,
George B. Thomasma.

1866 DEFENDANTS' EXHIBIT NO. 39.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.
April 22, 1942.

Mr. F. G. Wacker
490 College Road
Lake Forest, Ill.

Dear Mr. Wacker:

I am busy making test models of my tension wrench as you know I can do this work very well, but I realize I need patent counsel if I am to succeed, I would prefer Mr. Fidler handle my claims for me if he is willing.

I would like to know if you would object to this for any reason.

I could use one of your fine shapers to good advantage and I wonder if I could get one perhaps on a lease lend

basis to complete my models quicker and save valuable time.

Very truly yours,
G. B. Thomasma.

1867 After Five Days Return to
G. B. Thomasma
1121 Potter Ave.
Park Ridge, Illinois

Canceled
3-Cent
U. S. Postage
Stamp

(Stamp) Chicago Apr 23 1030 AM 1942 Ill.
7
Jefferson Station

Mr. F. G. Wacker.
490 College Road
Lake Forest
Ill.

1868 DEFENDANTS' EXHIBIT NO. 40.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

April 28, 1942.

Mr. George Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Replying to your letter of April 22 I am interested to note that you are busy making sample models of your tension wrench; and as previously stated we will be interested to have the opportunity of looking your wrench over after it is worked out in its final form.

In reply to your thought that you would like to engage Mr. Fidler as your patent attorney I doubt if this would work out satisfactorily. While I do not anticipate any conflict of interests at this time, such a situation might develop in the future; and in that event Mr. Fidler would be placed in a very difficult position trying to serve two masters. Inasmuch as we were his original client you would find yourself in second place, which I do not think you would want.

I suggest that you ask Mr. Fidler to recommend to you another competent and reliable patent attorney, which I am sure he will be glad to do for you.

In reply to your suggestion that we give you a Shaper on a "lease-lend" basis will state that all of our shaper

shipments are subject to priority regulations by the Tools Branch of the War Production Board and every single machine is scheduled months ahead in accordance with their order. They check up on us very closely and would raise hell with us were we to fail to adhere to their schedule. Accordingly, George, I am afraid that it will be impossible for us to take care of you on a shaper unless you can supply us with an adequately high priority. On any other basis we can't ship a shaper to our best friends.

With kindest regards,

Very sincerely,

fgw hns Fred G. Wacker

1869 DEFENDANTS' EXHIBIT NO. 41.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 12, 1942

Mr. George Thomasma
1121 Potter Ave.,
Park Ridge, Illinois

Dear Mr. Thomasma:

Mr. Wacker has asked that I return your experimental surfacing tool to you as you requested of Mr. Fidler. I am sending it to you today by prepaid express.

Very truly yours,
Automotive Maintenance Machinery Co.
By

ms: *Secretary to Mr. Wacker*

1870 DEFENDANTS' EXHIBIT NO. 43.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.

October 10, 1940

Mr. Fred G. Wacker
Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Dear Mr. Wacker:

In view of our previous telephone conversations respecting investigation expenses in connection with Interference No. 77,365, I instructed our bookkeeper to let me have your

September bill so that I could write you about the matter. The bill in question is enclosed.

The investigation expense having to do with Interference No. 77,565 has given me great concern. The expense for September was more than I anticipated but, in view of the fact that that expense was held down to the minimum, under the circumstances, I do not see that there is anything that I can do about it,—except to completely forget about any time that I have put in on the matter. I spent considerable time in going into the matter with the investigator, mapping future plans, but I will not make any charge for my services in that respect.

According to the information that I have, the services rendered with respect to the investigation have been charged for at the very minimum rate. Circumstances
1871 beyond our control necessitated the spending of a great amount of time,—some of it in order to retain the position we had originally gained. The expense has now been cut down to approximately $100.00 per week and this amount will be maintained until about the 24th of October, the date on which the other party must complete its testimony.

The expense in this matter has run more than I anticipated, and at that, the services have been rendered at a wholesale charge basis, except for the original $500.00 which was an out-of-pocket expense at the very beginning.

I am sure that you appreciate the situation and that I am doing everything possible to hold down the expense. I am also quite sure that you will feel that the expense was worth while if we attain our objective. The situation is a most difficult one to cope with and our hope of success lies in a never-ending effort until we have done everything possible to accomplish our end.

Of course, if you feel that the expense is going beyond any amount that might be warranted under the circumstances, I am in position to halt all further activities, relying on what we have already gained. Naturally our position would be best by continuing as in the past, but I do not want to do anything contrary to your wishes from the expense standpoint.

If you have any suggestions to offer, I would appreciate hearing from you.

With kindest personal regards, I am

Very truly yours,

F J

1872 DEFENDANT'S EXHIBIT NO. 44.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co., North Chicago, Ill.)

April 21, 1941.

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Ill.
Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

Attached hereto is a copy of my self-explanatory letter of even date to George Thomasma.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.,
By Fred G. Wacker,
Fred G. Wacker,
Pres.

fgw/ms

1873 DEFENDANTS' EXHIBIT NO. 45.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

June 20, 1941.

Mr. George Thomasma
1121 Potter Road
Park Ridge, Illinois

Dear George:

I wish to acknowledge receipt of the cylinder surfacing tool drawings dated April 28th and May 6th, 1941, which Mrs. Thomasma delivered to me the other morning. I was in conference at the time Mrs. Thomasma came in and, for that reason, I did not get to see her. In fact, I was not disturbed when she came in and she had left at the time that I was informed that she had been here.

The tool which you left with me sometime ago, and which is shown by these drawings, was sent to Mr. Wacker. I do not know whether he has written you concerning it, but he

acknowledged to me its receipt and indicated that it has some favorable points. I understand he is looking into it and will either write to you or to me. In the meantime, I have sent the drawings on to him.

With kindest regards, I am

Very truly yours,

F:J

1874 DEFENDANTS' EXHIBIT NO. 46.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

Park Ridge, Ill.,
June 24-41

Mr. R. E. Fidler:

Your letter of 20th in hand. I am very sorry you were unable to see Mr. Thomasma when she delivered my drawing to your office.

I have a copy of Mr. Wacker's letter to you and I am surprised to learn the wood strips were removed and replaced with Stones and felts and after trial discoved my Model was not rugged enough, as a result the guide pins broke away from holders, when I delivered this tool to you I mentioned the fact, the guide pins were soldered to holders, inasmuch as this Model was hand made for appearance only, for practical purpose these guide pins should be welded or riveted to holders to withstand strain of actual use.

I do not believe Mr. Wacker and his engineers should attempt to redesign any tool I design without my permission.

I believe I know what is required to stand the gaff, and will on order from Mr. Wacker make a tool I am sure will withstand tests equal to normal use.

1875 If Mr. Wacker will forward stones and felts for same I will build a tool at once.

I am sure you are aware of the cost of experiments on my part to date and I would like definite information regarding his promise to me, thru Mr. Travis, last year.

I trust you will give this your attention.

Very truly yours,

George B. Thomasma.

1876 DEFENDANTS' EXHIBIT NO. 47.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co., North Chicago, Ill.)

June 25, 1941.

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois
Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

You will find enclosed copies of our self-explanatory letters of even date to George Thomasma which we hope will clarify the situation with regard to his Cylinder Surfacing Tool.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,
Fred G. Wacker,
Pres.

fgw/ms
2 enc.

1877 DEFENDANTS' EXHIBIT NO. 48.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 27, 1941.

Mr. George Thomasma
1121 Potter Road
Park Ridge, Illinois

Dear George:

I sent a copy of your letter of June 24th to Mr. Wacker. This is the letter that Mrs. Thomasma delivered to me personally. I note that Mr. Wacker wrote you directly on June 25th answering some of the questions raised in your letter and I hope that you found his reply satisfactory.

Some time ago I sent Mr. Wacker the drawings that you gave me covering the cylinder surfacing tool. He has returned them stating that he does not need them since he

has the tool. I am therefore returning these drawings to you for safekeeping. I have, nevertheless, retained blue prints of the same in my files so that the record will be kept clear as to the subject matter submitted,

With kindest regards, I am

Very truly yours,

F:J
Enclosures
CC: Mr. Fred G. Wacker

1878 Post Office Department
Official Business

Registered Article
No. 864902
Insured Parcel
No.

Penalty for Private Use
to Avoid Payment of
Postage $300
Postmark of Delivering
Office

(Park Ridge Ill.)
(Jun 30)
(8 P M)
(1941)

Return to Davis Smith C. Shonts
(Name of Sender)
Street and Number,) 332 S. Michigan Av.
or Post Office Box,) Chicago, Illinois,

1879 Return Receipt.

(Park Ridge, Ill.)
(Jun 30)
(8 P M)
(1941)

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 George Thomasma
(Signature or name of addressee)

2 (Illegible)
(Signature of addressee's agent —Agent should enter addressee's name on line One above)

Date of delivery 6/30, 1941.

1880 Mr. George Thomasma
1121 Potter Road
Park Ridge, Ill.
(Anmeo)

1881 Postmaster per Per

Receipt for Registered Article No. 864902
Fee paid 15 cents.
Declared value No
Return Receipt fee 3
Delivery restricted to addressee:
in person , or order
Class postage
Surcharge paid, $
Spl. Del'y fee,
Fee paid
Accepting employee will place his initials in space indicating restricted delivery.

(Illegible)
Postmark
(Mailing Office)

The sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnity.—Domestic registry fees range from 15 cents for indemnity not exceeding $5 up to $1 for indemnity not exceeding $1,000. The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 15 cents. Consult postmaster as to the specific domestic registry fees and surcharges and as to the registry fees chargeable on registered parcel-post packages for foreign countries. Fees on domestic registered C. O. D. mail range from 25 cents to $1.20. Indemnity claims must be filed within 1 year (C. O. D. 6 months) from date of mailing.

1882 DEFENDANTS' EXHIBIT NO. 49.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.,
June 30, 41.

Mr. R. E. Fidler,
332 So. Michigan Ave.,
Chicago.

Dear Mr. Fidler:

I have your letter of 6-27 with my drawings.

Mr. Wacker wrote two letters on June 25th, I am pleased expresses his sentiments regarding my model hone also my efforts in this direction.

The other a request for information.

I will gladly do all I can to secure all information and forward same to him at once.

I know of no person I would rather submit my developments to and if they appeal to him I assure you again Mr. Wacker has first choice.

Thanks again.

Very truly yours,
George B. Thomasma.

1883 DEFENDANTS' EXHIBIT NO. 50.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.

Park Ridge,
Dec. 1, 1941.

Mr. R. E. Fidler,
332 So. Michigan Ave.

Dear Mr. Fidler:

Please find dial and page out of magazine enclosed as per our telephone conversation of even date.

Yours very truly,
George B. Thomasma.

1884 DEFENDANTS' EXHIBIT NO. 52.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Rudolph B. Salmon, Chicago.)

December 27th, 1940.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan Avenue,
Chicago, Illinois.

To Rudolph B. Salmon, Dr.

To examination, comparison and opinion of drawings in re Zimmerman vs. Larson $50.00

(Written across face.)
Received Payment, 12/30/40. Rudolph B. Salmon. O. K. R. E. F.

1885 DEFENDANTS' EXHIBIT NO. 60.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co., North Chicago, Ill.)

February 3, 1941.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan,
Chicago, Illinois.

Attention: Mr. R. E. Fidler.

Dear Mr. Fidler:

Re: Interference No. 77,565,
Automotive-Snap-On Settlement Agreement.

Replying to your letter of January 31 I gather from Snap-On's letter that they will try to substitute Torque Wrenches of different design on their industrial orders and in that way permit themselves to ship a greater quantity of wrenches to the Government without exceeding the total of 6,000.

Personally, I do not think we would be justified in spending the money to get into another argument with them unless we could hold them to the line beyond any question of doubt.

Of course the thing that I anticipate Snap-On and Precision will do is to try to get the Government to demand these wrenches regardless, unless we can fill the orders of the Government in the same sizes, the same specifications and at the same prices, and if that should happen it will certainly put us on a spot.

Please let me know if Mr. Hobbs will arrange for us to receive some sample Precision wrenches or whether we will have to get them in a more roundabout way.

With kindest regards,

Very sincerely,
Automotive Maintenance Machinery Co.,
By Fred G. Wacker,
Fred G. Wacker,
Pres.

fgw/ms.

1886 DEFENDANTS' EXHIBIT NO. 61.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Petition.
Exhibit 5.

September 28, 1938.

Preliminary Understanding.
Kenneth R. Larson and
Snap-On Tools Corporation.
Larson Patent application entitled "Torque Wrench".
Serial No. Filed
Attorney's File No. 11354.

It is understood and agreed that the assignment of the aforesaid patent application from Kenneth R. Larson to Snap-On Tools Corporation is being held as security for the payment of patent legal services in connection with the preparation and filing of the above-identified patent application covering the submitted torque wrench. Further Larson shall, supply wrenches to Snap-On Tools Corporation of the submitted design at prices mutually agreed upon between Snap-On Tools Corporation, and further, Larson agrees to permit Snap-On Tools Corporation to withhold one-fourth of the purchase price from each order as a defensive patent litigation fund to be used by Snap-On Tools Corporation in the event they are sued for patent

infringement by virtue of their sale of torque wrenches they are supplied by Larson. When this defensive litigation fund amounts to $2000.00, the Snap-O Tools Corporation is to withhold one-eighth of the purchase price from each successive order until a fund of $4000.00 is created to be held in trust by Snap-On Tools Corporation. Larson agrees to indemnify Snap-On Tools Corporation for any and all legal expenses and awards of damages or profits against it by any Court owing to its sale of said wrenches, and the aforesaid litigation fund may be used by Snap-On Tools Corporation toward safeguarding itself should it be required to defend any suits. Should no suit be instituted for patent infringement against Snap-On Tools Corporation by virtue of their sale of wrenches supplied by Larson within three years of the date of the first shipment, then this litigation fund is to be returned to Larson with whatever interest that has accumulated thereon at the saving bank account rates in force in the City of Kenosha, State of Wisconsin.

Snap-On Tools Corporation is to have an exclusive license to sell the submitted torque wrench under any patent that may eventuate from the patent application that is about to be filed in the United States Patent Office, and should Larson fail to maintain an adequate supply of 1887 the submitted torque wrenches for Snap-On Tools Corporation at mutually agreed prices or Larson discontinues to manufacture these torque wrenches or fails to meet the workmanship and material guarantees or reasonably prompt shipments, then Snap-On Tools Corporation may take up the manufacture of these wrenches to supply their requirements at anytime that the supply is not available to them at mutually agreed prices or Larson discontinues the manufacture of these wrenches or fails to maintain competitive prices to Snap-On Tools Corporation that should be not more than the average of the three lowest bids received by Snap-On Tools Corporation from other firms for the manufacture and supply of these wrenches. Evidence of three written bids from competitive firms shall be sufficient to require Larson to reduce the prices to Snap-On Tools Corporation to correspond with the average of the three lowest bids for manufacturing the aforesaid wrenches according to specifications prescribed by Snap-On Tools Corporation.

Larson agrees to replace any and all wrenches that are

defective or that may become defective in use by the customers of Snap-On Tools Corporation, and Larson unconditionally guarantees these wrenches under the same terms and conditions prescribed by Snap-On Tools Corporation to its customers, and the cost of patent protection shall be borne by Snap-On Tools Corporation and deducted from the amounts due and owing Larson from time to time.

This memorandum is to be incorporated into a formal contract and when and if all the conditions hereof are complied with by Larson, Snap-On Tools Corporation will reassign the patent application or any patent eventuating therefrom to you in exchange for an exclusive license under any issued patent. Should it come about that under the terms of this understanding, Snap-On Tools is required to manufacture its own supply of wrenches according to your submitted design and a patent issued to Larson, then and thereafter Snap-On Tools Corporation will pay you a royalty of five per cent (5%) of the sales price of these wrenches to their branches until such time as the patent expires or is declared invalid or competition develops to an extent that Snap-On Tools Corporation is not in a position to enjoy its exclusive rights under any patent issued to Larson.

Larson agrees to supply these wrenches in the capacities of 75 ft. lbs.; 350 ft. lbs.; 500 ft. lbs. and 1000 ft. lbs.; and Snap-On agrees to purchase the first two sizes in minimum quantities of 500 by furnishing Larson with a purchase order specifying delivery thereon as needed by Snap-On Tools Corporation. Reasonably prompt shipments by Larson shall entail not more than ten days from receipt of repeat orders and thirty days on the original order.

Kenneth R. Larson (Sgd.),
Snap-On Tools Corporation,
By Joseph Johnson (Sgd.),
Vice-President.

1888 DEFENDANTS' EXHIBIT NO. 62.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago.)

November 11, 1940.

Precision Instrument Mfg. Co.,
1846 Miner Street,
Desplaines, Illinois.

Attention: Mr. Kenneth R. Larson and
Mr. Richard Carlson.

Re: Larson vs. Zimmerman Interference
No. 77,565—File 11484.

Gentlemen:

I received an anonymous telephone call this morning by a party who said he was a brother to a friend of mine who knew I was representing a party involved in a case that concerns a tool. This supposed friend of mine wanted to let me know though his brother who called that he knew that the witnesses presented in behalf of my client perjured themselves. This party refused to give me their name and the only reason he said that his brother did not call me was that I knew his voice and he did not want me to know the source of this information.

I told this party that I have received several inferences to the same effect and that every effort was made to check these charges by arranging for a conference with a party who was supposed to know. I also advised him that his party refused to keep their appointment and for that reason nothing was accomplished.

The impression I am under is that Attorney Krichiver representing Tomasma, was the party who was behind the anonymous call. Obviously, I cannot continue as attorney for any party who has presented fraudulent testimony and evidence, but thus far my efforts to check to corroborate these charges have not been satisfied nor have they been fruitful of any results.

It seems to me that this party who called or any one behind this call would submit the proofs rather than rely on an indirect call from an unknown source. I am giving you this information as it was relayed to me and feel that you are duty-bound to convey to me any information that

you receive one way or another as to the truth or untruth of the remarks that have been made.

Yours very truly,

Harry C. Alberts.

HCA:EM.

P.S. Leaving for the East—will return Friday.

1889 DEFENDANTS' EXHIBIT NO. 63.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 4, 1940

Precision Instrument Manufacturing Co.
1846 Miner Street
Des Plaines, Illinois

Attention: Mr. Larson

Gentlemen:

This letter reviews the conference of some length which we had this morning. As we told you, we had a conference on Monday with Mr. Fidler. We told him that we were not interested in reading the record nor of making any investigation of facts further than was necessary to establish what should be done to protect the interests of everyone. This seems to be Mr. Fidler's viewpoint. We told him that we were willing to concede priority; that we wished an appropriate release of damages and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments. We believe that Mr. Fidler is in agreement on principle.

After the conference with you and explaining in detail what has been summarized above, we propose to write Mr. Fidler a letter substantially along the lines indicated in the attached copy.

We would like your early comments on the proposed letter.

We enclose also our statement for $250.00 against which charges will be credited as they accrue. This statement is prepared upon the assumption that the matter can be settled. Obviously if it becomes necessary to embark upon extensive litigation, our retainer would be much larger.

We would appreciate our prompt attention to the statement.

Yours very truly,
Haight, Goldstein & Hobbs,
By M. K. Hobbs

MKH:FS
Enclosures

1890 DEFENDANTS' EXHIBIT NO. 64.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Raymond D. Fidler, Esq. December 4, 1940
332 South Michigan Ave.
Chicago, Illinois

Dear Mr. Fidler:

Re: Larson-Zimmerman Interference

Earlier today we talked with our clients about this matter and its proposed settlement. As we have indicated to you, we have not read the record nor do we propose to do so, at least at this step of the proceedings. Rather our philosophy is based upon the assumption that everybody is wrong, and that the practical thing to do is to make a definite settlement of rights. We therefore propose the following:

1. Larson will concede priority to Zimmerman;

2. Ameo will give an appropriate release to Larson and Precision Instrument Manufacturing Co. against claims of civil damages;

3. The owner of the Zimmerman application and patent, whom we assume to be Ameo, will give to Precision Instrument Manufacturing Company a non-exclusive license under the Zimmerman application and patent so that Precision's customers will be protected against charges of patent infringement; and as consideration for the license, Precision will pay 3% on all wrenches delivered after the date of execution of the contract. Further we will use our best efforts, and believe that we can succeed in them, to have Snap On deduct from its payments to Precision the amount of royalty and pay such royalty directly to Ameo.

We assume that you will consult and advise with your client on the proposal herewith submitted and will, in turn, advise us.

Yours very truly,

MKH:FS

1891 DEFENDANTS' EXHIBIT NO. 65.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 4, 1940

Precision Instrument Manufacturing Co.
1846 Miner Street
Des Plaines, Illinois

To retainer for professional services re settlement of Larson-Zimmerman interference, charges to be credited against the retainer . . . $250.00

1892 DEFENDANTS' EXHIBIT NO. 66.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 6, 1940

Raymond E. Fidler, Esq.
332 South Michigan Ave.
Chicago, Illinois

Dear Mr. Fidler:

Re: Larson-Zimmerman Interference

We have had two conferences with our client in this matter, the last one today. As we have indicated to you, we have not read the record nor do we propose to do so, at least at this step of the proceedings. Rather our philosophy is based upon the assumption that everybody is wrong and that the practical thing to do is to make a definite settlement of rights. We, therefore, propose the following:

(1) Larson will concede priority to Zimmerman;

(2) Amco will give an appropriate release to Larson and Precision Instrument Manufacturing Company against claims of civil damages;

(3) The owner of the Zimmerman application and patent, whom we assume to be Amco, will give to Precision Instrument Manufacturing Company, a non-exclusive license under the Zimmerman application and patent so that

Precision's customers will be protected against charges of patent infringement. For all wrenches heretofore delivered or for which there are contracts for delivery, no royalty to be paid; but on any orders received subsequent to the date of the settlement contract, Precision will pay 3% on the sales price (that is, gross sales minus usual trade discounts). Further, we will use our best efforts, and believe we can succeed in them, to have Snap-On deduct from its payments to Precision, on any sales made to Snap-On, the amount of royalty and pay such royalty directly to Amco.

The foregoing proposal is conditioned upon securing back from Thomasma, stock which he holds in Precision Instrument Manufacturing Company. You may be able to be of help to us in this connection.

1893 We assume that you will consult and advise with your client on the proposal herewith submitted and will, in turn, advise us.

Yours very truly,
Haight, Goldstein & Hobbs,
By M. K. Hobbs

MKH:ES

1896 DEFENDANTS' EXHIBIT NO. 68.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago)

December 19, 1940

Mr. Harry C. Alberts
38 South Dearborn Street
Chicago, Illinois

Dear Mr. Alberts:

Re: Larson *vs.* Zimmerman, Interference No. 77,565.

We have a copy of your letter of December 18th to Mr. Hobbs.

In view of your letter we, as attorneys for Automotive Maintenance Machinery Co., feel constrained to make our position perfectly clear so that there will be no question about it in the future.

In the first place, we intend to and will proceed with the taking of the depositions pursuant to the notice already served upon you.

In the second place, we do not believe that you can divest yourself of all responsibility in this matter. You are still the attorney of record. Snap-On still has legal title to the Larson application in interference. As attorney for Snap-On and Larson, you took depositions on behalf of Larson. You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on 1897 behalf of Automotive. You employed the reporter.

Part of the transcript is not reported correctly or fully. The reporter delayed in transcribing part of the record. You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed. You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman patent without the slightest justification. I do not consider your quarrels with Precision as being any justification. Automotive is not interested in that matter.

You cannot shift your responsibility to Mr. Hobbs. We and Automotive do not propose to permit either you or your client, Snap-On, to divest yourselves of responsibility. We simply refuse to permit Automotive to be the "goat".

You have asked Mr. Hobbs to notify Mr. Fidler to direct all future notices to Mr. Hobbs rather than to you. We intend to continue to direct all notices to you until you have formally withdrawn as attorney, and even then we do not propose to permit you to evade any obligations which you have up to that date incurred.

With respect to the transcribing of the Larson record, I think I should say the following in all fairness to Mr. Hobbs. Mr. Fidler did advise Mr. Hobbs that those portions of the testimony which had not been transcribed as of December 2nd, 1940, could be held up because it appeared that a settlement was very likely. I understand that 1898 Mr. Hobbs so informed you. Of course, it was understood by everybody that, if and when the settlement fell through, the transcript would be promptly completed. That is your definite obligation, and we are looking only to you to perform that obligation.

I am enclosing an extra copy of this letter which I would appreciate if you would send to Mr. Johnson of

Snap-On so that Mr. Johnson will know exactly what Mr. Wacker's position is as we wish to avoid any unnecessary misunderstanding as between them.

Very truly yours,

Harry W. Lindsey, Jr.

L:J

Enclosure

CC: Mr. Johnson, Snap-On Tools Corporation

1901 DEFENDANTS' EXHIBIT NO. 70.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Re: Larson *vs.* Zimmerman
Interference No. 77,065

Conference Held With Mr. R. E. Fidler at the office of Davis, Lindsey, Smith & Shontz, 332 S. Michigan Blvd. between 1:30 P. M. and 4:30 P. M.—Wednesday, November 21, 1940, at the Telephonic Request of Mr. Fidler.

Mr. Fidler called this morning to advise that he had information that he thought I should know about the Larson case and testimony presented in behalf of Larson and that he was obligated by virtue of professional courtesy to disclose facts that he was certain I had no knowledge of.

(1) At this conference Mr. Fidler held a looseleaf bound typewritten record of a deposition and affidavit of Tomasna which appeared to be something like 100 pages in length and his signature and a notarial seal and a sealed ribbon on the last page. The contents were not discussed in detail but Larson's sketch (Exhibit 27) was certain be proved as the work of Tomasna some time in the fall of 1938 and Fidler has a mechanical pencil drawing made by Tomasna at a later date of an abrasive chuck and spindle arrangement that shows substantially the same drawing arrangement and views together with the same printed lettering. Fidler is holding this as evidence to prove they were both made by the same party and Tomasna made this particular drawing so that he must be the draftsman of Exhibit 27.

(2) Fidler says that Larson was at Amco on numerous evenings with Tomasna in that he had the run of the plant and was more in the nature of a strawboss. He was con-

sidered a genius in many ways and was supposedly the originator of many good improvements on the Ameo wrench that were submitted to Zimmerman, but the later would never adopt them.

(3) The lathe in Larson's basement was purchased out of funds borrowed from the bank and this loan was signed for both by Tomasna and Larson some time in 1937 or 1938. This is contrary to certain testimony of Larson.

(4) Carlson supposedly met Larson for the first time in 1938 through Tomasna's wife who frequented the Carlson beauty shop. Tomasna's wife knew Carlson had money and for that reason suggested he be approached by Tomasna to finance the production of the wrench which Tomasna worked on along with Larson and which admittedly was primarily the work of Larson in its physical development and creation. Tomasna has no complaint about Larson's filing the patent application since the specific features were suggested by Larson and created by him. Nevertheless this proves the early acquaintanceship between Carlson and Larson. According to this story, Larson could not have met Carlson until November 1938 which was about a month after he procured the original blanket order from Snap-On.

1902 (5) It was reported without any certainty that Carlson is operating under an assumed name and that his real name is something other than Carlson. He supposedly purchased a beauty shop operated by one, Walter A. Carlson, and gradually assumed this name and continued the business thereunder. This is the only fact that Fidler was not definitely certain about.

(6) Larson went with Tomasna to the plant of Menasha Railroad Co. at Sturtevant, Illinois to look at their torque wrench and prove to them that Larson's wrench was better. Supposedly the manager of this railroad Company tried to convince Larson that their wrench was superior and would stand more punishment and threw it around to prove that. Larson supposedly tried to imitate the same kind of treatment with his own wrench and at that time broke the handle which corresponds to Exhibit 11 having the broken handle. This happened sometime in 1938 rather than in 1934 as Larson testified.

(7) Fidler claims to know the code representing letters on two of the wrenches. He stated that this code was as follows:

F-I-S-K-E-G U A N O
1 2 3 4 5 6 7 8 9 0

The serial numbers on Exhibit 31 which is FOX would be 109. On Exhibit 37 which is FOG would be 106; and on one of the exhibits attached to the board, it is believed that the code is FOU or 107. This would mean Exhibit 37 is the sixth wrench, exhibit 31 the 9th wrench and FOUR the 7th wrench, which is not exactly the sequence of dates testified to by Larson.

(8) Tomasna's home was fully paid for and it is reported that Carlson and Larson called a real estate man to appraise it for purposes of determining how much of a mortgage could be placed thereon and that money to be used for financing production of the wrench. While Tomasna supposedly was against this, Carlson and Larson are charged with taking this matter in their own hands when Tomasna declined to permit this at the crucial time. This was in 1938.

(9) Kriehiver and Tomasna are apparently cooperating fully with Amco and Fidler and have been for some time. On the charter for Precision Instrument Mfg. Co. Tomasna's name is misspelled as Tamasa. He signed the application for charter in the same manner and this supposedly occurred at the request and insistence of Mr. Carlson.

(10) The aluminum castings set forth on sales slips of Ravenswood Brass Foundry Co. while genuine, supposedly covered castings other than those for the wrench. 1903.

(11) Fidler insisted that Wacker of Amco would force this matter out in the open if they were compelled to prove these facts by taking testimony at Hartford, Connecticut (apparently Zimmerman's present residence) and elsewhere in the U. S. at great expense. In that event, action for perjury would be insisted upon and the case thrown wide open with the axe piercing wherever it would fall.

(12) I recommended that a conference be arranged between Fidler, Wacker of Amco, Tomasna, Mr. Johnson of Snap-On and myself. I called Snap-On at 4:30 P. M. and talked to Daniel. Also Johnson. Johnson tentatively set the conference for Thursday, November 28, 1940 at 10 A. M. at my office in that he would be in the East and return through Chicago on that day. Mr. Johnson suggested that this matter be withheld from Larson until this conference had taken place and thereafter it would be submitted to Larson and Carlson.

1904 DEFENDANTS' EXHIBIT NO. 71:

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago)

December 3, 1940

Davis, Lindsey, Smith and Shontz
1901 McCormick Building
332 South Michigan Avenue
Chicago, Illinois.

Attention: Mr. R. E. Fidler

Re: Larson *vs.* Zimmerman
Interference No. 77,565
File 11484

Dear Mr. Fidler:

This will confirm my announcement at the conference held at your office on November 28, 1940 with Messrs. Wacker, Allen, Thomasma, and Joseph Johnson, that I would withdraw as counsel for Kenneth R. Larson in the above entitled proceedings in view of an alleged contradiction in the Larson testimony. This alleged contradiction indicates that a conflict of interests may develop between Snap-On Tools Corporation and the interests represented by Kenneth R. Larson.

Accordingly, the officials of Snap-On Tools Corporation who were given a complete report on the conflicting versions stated by Mr. Tomasma at your office, on one hand, and the testimony presented by and in behalf of Larson, on the other hand, have authorized me to withdraw as counsel for Larson and the latter has been so advised as of November 28, 1940.

I personally guaranteed to see that you received a refund for $20.00 erroneously requested of you by the reporter, Mr. Raftery, and I am enclosing herewith that sum less charges paid by this office for photostats that did not come within the understanding to furnish photostats of exhibits without charge to you. These photostats involve full size reproductions of Exhibit 27 and six sales slips that were not exhibits, but were merely included along with Exhibits 2, 3, 4 and 5.

The cost of these photostats amounts to $4.55 in ac-

cordance with the attached invoice. I have included on this invoice the six sales slips which were contained on another bill involving other photostats not directly connected with this proceeding so I must retain the bill for my files. The prevailing price for 11 x 16 or smaller negatives in Chicago is 50¢ per copy so that six sales slips amounted to $3.00 plus $1.55 per invoice of November 23, 1940 or a total of $4.55.

1905 My check in the sum of $15.45 constitutes the difference between the $20.00 due you for money advanced to the reporter and the charge for photostats made to this office.

Yours very truly,

Harry C. Alberts

HCA:EM
Encl.

1906 DEFENDANTS' EXHIBIT NO. 72.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 11, 1940

Memorandum Re Larson *vs.* Zimmerman—File 11484.

Mr. Hobbs called and advised that their negotiations with Amco through Fidler have resulted in nothing other than the following arbitrary demands:

1. Wacker wants Snap-On to pay the difference between Amco's former selling price and Snap-On's present selling price or an amount equivalent to about $3.00 on every wrench that has been sold to date.

2. Amco will not consider 3% as a royalty on present of future orders on wrenches.

3. Amco feels it has been damaged through Snap-On's action and Wacker still persists in the thought that Snap-On is Precision and Precision is Snap-On.

Mr. Hobbs gave me the impression that he has gone as far as he could in the matter and further negotiations would be of no avail. I recommended that he give them a final proposition of Snap-On being willing to cease the sale of the wrench within the counts in interference in the event they will be allowed to complete their present commitments of something like 3100 wrenches and thereupon receive releases as to all present users. If this was not

satisfactory then to insist that Larson would continue with the interference.

Larson apparently was at Mr. Hobb's office at the time of this telephonic conference and later interviewed me while Mr. Daniel was in the office. Mr. Larson advised that Mr. Hobbs was going to send a final proposition to Fidler via messenger today along the line suggested by me and that in all probability Hobbs would not represent Larson in the event the interference would be proceeded with. Hobb's reason is that he is very busy on infringement suits and would have to charge more than the capacity of Precision can pay.

Later Mr. Lindsey of Davis, Lindsey, Smith and Shonts which is the patent law firm employing Mr. Fidler, called me and asked whether or not Snap-On would be willing to pay any money to Amco. I replied with an emphatic "No" and he then asked what Snap-On would be willing to do. I advised him that Snap-On would be willing to cease selling the present type of wrench when and if their present commitments amounting to something like 3100 were fulfilled and upon receiving a release as to all wrenches sold by them to date.

He then asked if Snap-On would be willing to admit the validity of the patent when issued to Zimmerman and I advised that Snap-On most likely would be willing to admit the validity of the claims in interference in return for a release and the right to fulfill present commitments.

1907 He then asked if Snap-On would turn over to Amco the so-called defense fund in the amount of $2708.00 belonging to Precision and my reply to that was that in the event Snap-On received a release, then we would abide by any instructions given us by Precision with respect to that fund and Amco would have to make any deal relative thereto with Precision. The purpose of Amco's request for the defense fund was to partially indemnify them for their investigation expense which they claim amounts to something over $500.00.

I corrected Mr. Lindsey with reference to calling this money a defense fund since it was a fund to indemnify Snap-On rather than to be utilized as defense of any litigation. Then Mr. Lindsey said that perhaps Precision would agree to turn over the money to Amco and Snap-On would under such circumstances release possession thereof in the event Amco would agree to reimburse Snap-On

in the amount of this fund in the event they were sued by anyone else for patent infringement. I merely said such an arrangement as far as Snap-On is concerned would be considered as a possible way out; subject, however, to the discretion of Precision.

I then suggested to Lindsey that whatever proposition Amco was ready to submit so far as Snap-On is concerned should be given to me in writing and that I would give the matter prompt attention and see that there was immediate action thereon.

Harry C. Alberts

1908 DEFENDANTS' EXHIBIT NO. 72-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago)

December 12, 1940

Snap-On Tools Corporation
Kenosha, Wisconsin.

Atten: Mr. W. W. Daniel, Asst. Secretary

Re: Larson vs. Zimmerman—File 11484

Dear Walt:

I am enclosing herewith notes pertaining to the telephonic conferences of yesterday of which you were partially informed during the conference at this office. After you left yesterday, Mr. Lindsey also representing Amco called me on the telephone and the substance of the conversation is contained in the attached notes.

Today, Mr. Hobbs who now represents Precision Instrument Manufacturing Co. called and advised that a conference between Mr. Lindsey and himself was scheduled for 9:30 A. M. Friday morning at the office of George I. Haight. Mr. Hobbs asked me if I would appear in behalf of Snap-On and I said that I would.

I will report the results of this conference as soon as a definite understanding is effected or relate whatever disagreements result therefrom. I noting that I told Mr. Lindsey that it is possible that Snap-On would consent to acknowledge the validity of the claims involved in interference, I might add that this is not a concession in that any interferant or those holding title through an inter-

ferant is by law estopped to deny the validity of claims involved in interference. Therefore, we are not conceding anything and as long as this may smooth the way for protection until such time as you can go into production or purchase a tool that is not covered by the counts in interference, I feel that this would be the thing to do.

If you or your associates have any serious objections to such a position, you had better call my office the first thing in the morning and the message will be relayed to me by telephone.

With kindest regards, I remain

Yours very truly,

HCA:EM Harry C. Alberts

1909 DEFENDANTS' EXHIBIT NO. 73.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago.)

December 17, 1940

Davis, Lindsey, Smith and Shontz
1901 McCormick Building
332 South Michigan Boulevard
Chicago, Illinois.

Attention: Mr. Raymond E. Fidler

Re: Precision Torque Wrenches—Your Submitted Settlement Agreement File 11580.

Dear Mr. Fidler:

I conferred with my client, Snap-On Tools Corporation, at Kenosha the greater part of the day in connection with your proposed contract of settlement involving your client, Automotive Maintenance Machinery Co. and Snap On Tools Corporation. After a lengthy conference and a thorough consideration of the entire matter from my client's standpoint, the following important facts were ascertained:

1. The subject matter of the second Larson patent application according to the records of Snap-On Tools Corporation resulted between Kenneth R. Larson, on one hand, and the development department of Snap-On Tools Corporation, on the other hand. The records of Snap-On Tools Corporation evidence that the spring tail or highly resilient dial operating beam extension was the sole concept of

George A. Walraven, an engineer in the development department of Snap-On Tools Corporation.

2. Walraven also suggested some improvements in the dial mechanism to overcome defects due to abuse of the wrench and as a result of these suggestions, Larson improved thereon to the extent of formulating the friction clutch pointer mounting element as the equivalent of certain concepts of Walraven, but incorporated the Walraven spring dial actuator without material change as a safeguard against dial mechanism injury.

1940 3. Because Snap-On Tools Corporation did not want to become involved in a joint invention with Larson at that time in view of the provision in the agreement of September 28, 1938, for reversion of all patent applications to Larson or his nominee, Precision Instrument Manufacturing Co., Inc., it was decided at that time not to file a joint application on the combination of features involving a spring tail dial mechanism actuator and the improvements in the dial mechanism that coordinated with each other to preclude defects in the measuring instrumentalities through abuse in the use of the torque wrench.

4. Now that Larson is in a position where he requires the cooperation of Snap-On Tools Corporation to release him under the existing contract dated September 28, 1938 in order to entertain any proposition of settlement submitted by the Automotive Maintenance Machinery Co., there is reason for Snap-On Tools Corporation to assert exclusive possession of its own spring tail dial actuator concept in conjunction with improvements in the dial mechanism that directly resulted through the efforts of Snap-On Tools Corporation and at its expense. For that reason, Snap-On Tools Corporation has concluded that it must insist upon Larson with the assent of his nominee, subscribing to a joint patent application with Walraven wherein claims would be made to their joint conception and that such remain the property of Snap-On Tools Corporation in consideration of releasing Larson and his nominee under the agreement of September 28, 1938. Snap-On Tools Corporation cannot, therefore, agree to the assignment of the second Larson patent application to your client in accordance with the tentative draft of the agreement submitted by you in behalf of Automotive Maintenance Machinery Co.

5. The second patent application of Larson shows but does not claim the highly resilient dial beam extension and measuring instrument actuator because this was not the invention of Larson and at that time it was thought more feasible not to jointly combine Walraven with Larson. A joint patent application would be filed as a substitute for Larson's second sole patent application. The second Larson sole patent application would be formally abandoned in favor of the joint patent application which is to remain the exclusive property of Snap-On Tools Corporation.

1911 In consideration of the foregoing and a free short term license from the Automotive Maintenance Machinery Co. to Snap-On Tools Corporation to endure for a period only sufficient to enable the fulfillment of the present commitments of Snap-On Tools Corporation on torque wrenches thus far ordered from Precision Instrument Mfg. Co. as shown by its records, Snap-On Tools Corporation would be willing to do the following things:

(a) Reassign to Larson or his nominee the patent application serially numbered 232,723 involved in Interference No. 73,697. Thereupon, Larson or his nominee could make such concession with respect to this application as they deem advisable to Automotive Maintenance Machinery Co.

(b) Snap-On would acknowledge the validity of the four claims that were involved in interference and agree not to infringe these claims for the life of any patent that may eventuate therewith; provided, however, Snap-On Tools Corporation is to receive a free license to procure and its present commitments of torque wrenches of the type presently purchased from Precision Instrument Mfg. Co. In return for this concession of validity, Automotive Maintenance Machinery Co. will concede validity of any claims that may be allowed on the resilient spring tail dial mechanism actuator and the improvements in the dial construction described or intended to be described and set forth in the second Larson patent application that is to be substituted by a joint application to be filed in the name of Walraven and Larson. Title in and to this joint application is to be assigned to Snap-On Tools Corporation.

1912 (c) Snap-On Tools Corporation will refund to Precision Instrument Manufacturing Co., Inc., all funds held by it as trustee under the contract dated September 28, 1938 less all reasonable and legitimate expenses in accord-

ance with the terms prescribed therefor in your submitted draft of the agreement.

(d) Snap-On will agree to cancel the agreement of September 28, 1938 with Kenneth R. Larson or his nominee and mutual releases are to be exchanged between these two parties as to any required future performance under the agreement other than prescribed herein.

(e) Automotive Maintenance Machinery Co. is to release Snap-On Tools Corporation in accordance with the terms prescribed therefor in your submitted draft of the agreement.

The proposal herein contained is submitted upon the premise that the agreement involving Snap-On Tools Corporation will be separate and apart from the agreement involving Precision Instrument Manufacturing Co., Inc. Snap-On Tools Corporation does not know the extent to which Larson may be empowered by the stockholders and directors of Precision Instrument Mfg. Co., Inc. to negotiate a settlement of the type submitted by Automotive Maintenance Machinery Co. Further, Snap-On Tools Corporation would not become a party with Precision Instrument Mfg. Co., Inc. to any agreement in that Snap-On Tools Corporation can vouch only for its own performance of any terms subscribed to by it.

Additionally, the agreement of September 28, 1938 requires Snap-On Tools Corporation to reassign title and return the money in trust to Larson or his nominee so that any overt act required of Snap-On Tools Corpora-
1913 tion should be in the spirit of and conform to the provisions of the agreement of September 28, 1938; therefore, equitable title to the first Larson patent application and the money refundable to Larson or his nominee under said contract, should be returned back to Precision Instrument Mfg. Co. To expedite matters, Larson or his nominee could be required to endorse any check received from Snap-On Tools Corporation directly to Automotive Maintenance Machinery Co.; however, this is a matter that must be arranged between Automotive Maintenance Machinery Co. and Precision Instrument Mfg. Co., Inc.

In substance, this proposal conforms substantially with the terms of the contract submitted by you in behalf of Automotive Maintenance Machinery Co. except for Larson's second patent application. In this exception, Snap-On Tools Corporation insists that it must prevail for the rea-

sons set forth herein and because it, too, is entitled to receive some consideration for its past development expense and its surrender of such rights as it now possesses under the agreement of September 28, 1938. In accordance with that agreement Snap-On Tools Corporation need not refund any moneys nor reassign the patent applications to Larson or his nominee unless the contract is fully performed and Snap-On Tools Corporation is indemnified.

Without the concessions herein made by Snap-On Tools Corporation, Larson and his nominee could not effect a settlement with Automotive Maintenance Machinery Co. 1914 and this proposal has has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation irrespective of the outcome of this controversy.

This proposal is subject to the approval of Kenneth R. Larson or his nominee, Precision Instrument Manufacturing Co., Inc., as a condition precedent to accentance by the Automotive Maintenance Machinery Co. Should your client be willing to have you submit an agreement in accordance with the terms of this proposal I suggest that in your inducement clause you refer to Snap-On Tools Corporation only as equitable title holder of the Larson patent application pursuant to the agreement of September 28, 1938 rather than state that it is the owner of said patent application. In the submitted draft of the agreement, you have two inducement clauses referring to this title and it is my feeling that a single inducement clause as suggested herein would conform more accurately to the terms of the agreement of September 28, 1938.

Yours very truly,

HCA:EM Harry C. Alberts.

Cc: Mr. M. K. Hobbs
Snap-On Tools Corporation

1917 DEFENDANTS' EXHIBIT NO. 75.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago.)

December 19, 1940.

Mr. Harry C. Alberts,
38 South Dearborn St.,
Chicago, Illinois.

Dear Mr. Alberts:

Re; Larson-Zimmerman Interference.

Mr. Larson first consulted us on November 28, or 29, 1940. We immediately took steps to settle that matter and its attendant charges and counter-charges. From the date mentioned until the service of notice for taking testimony yesterday by the attorneys for Zimmerman, no steps or proceedings of which we are aware, were taken in the interference, save for the efforts being made to adjust the matter.

In these efforts and negotiations we represented Larson and Precision Instrument Mfg. Co.

We understand that with the possibility of adverse interests arising between Snap-On Tools Corporation and Larson, you quite properly wish to withdraw as attorney for Larson. We have so advised Larson, and also of the necessity of his engagement of other counsel to represent him.

Yours very truly,
Haight, Goldstein & Hobbs,
By M. K. Hobbs.

MKH:FS

1918 DEFENDANTS' EXHIBIT NO. 76.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 19, 1940

Davis, Lindsey, Smith & Shonts,
332 South Michigan Avenue,
Chicago, Illinois.

Attention: Mr. Harry W. Lindsey, Jr.

Re: Larson vs. Zimmerman
Interference No. 77,565,
File 11484.

Gentlemen:

I have your letter of December 19, 1940 which was delivered by messenger. This letter is entirely superfluous and constitutes, in my opinion, a good example of the type of duress with which all opposing parties including their attorneys have been subjected to throughout the proceeding and settlement negotiations. I very well know your position and attitude. It is not in keeping with the holiday season—good will toward all mankind. At least you should have postponed the necessity of persons appearing under subpoenae only two days before Christmas when everyone else is busy with preparations for and filled with the Christmas spirit. I expect, therefore, to ask Judge Barnes or some other judge sitting in his stead to postpone the required appearance of Mrs. Carlson and Mrs. Larson.

I do not conduct myself as an attorney with the exclusive viewpoint that my client is always right and the opposing party is always wrong. From what I have learned on November 28, 1940, this case presents no exception and on that account should have been settled fairly to both sides without stripping anybody. In the conference of December 13, 1940 you were very friendly, courteous and respectful. The only concession demand made known to me and Snap-On Tools Corporation up to the time of that conference was a concession of priority of the claims in interference. At this conference you presented a much broader demand which you verbally labeled tentative. The writer nevertheless expressed no indication as to what my client's view would be and you had no right to thereafter be belligerent, discourteous and disrespectful.

Frankly, this proposal inwardly shocked me, but I did

not express my feelings at the time. I told you I would confer with my client, Snap-On Tools Corporation. I did this. I placed the entire situation before them, and their conclusions were expressed by me in my letter of December 16, 1940 containing, in my opinion, a very fair compromise subject to the acceptance of Mr. Larson and the Precision Instrument Mfg. Co. over whom I exercise no control.

1919 Just because the counter-proposal of Snap-On Tools Corporation (subject to the acceptance of Mr. Larson and Precision Instrument Mfg. Co.) was not entirely to your liking, you became belligerent, power-wagging and now write threatening accusations against Snap-On Tools Corporation and the writer personally. You have my assurance that I do not weaken under duress nor do I think Snap-On Tools Corporation will wither under your accusations.

In my many years of experience in interference settlements, no one ever exacted more than concession of priority of the counts in interference, and your client has no right to threaten as I have repeatedly heard the expression from Mr. Fidler and Mr. Wacker "to unloose the dogs" if you do not get everything you ask for. A world is embroiled in a bloody and disastrous war to resist threats similar in kind and differing only in subject matter.

If error has been committed at the instance of witnesses produced in this interference, Snap-On Tools Corporation nor myself was aware of any wrongdoing and you know that. The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28, 1940. That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson. The only charge of wrongdoing thus far is at the instance of the self-confessed wrongdoer who doubtless is under even more duress than imposed upon the witnesses during the deposition and now being cast upon the writer and Snap-On Tools Corporation.

I am ready, able and willing to assume my responsibilities and those of Snap-On Tools Corporation. I cannot vouch for any other party in interest for reasons which you are well aware of and which Mr. Fidler acknowledged. On several occasions, Mr. Fidler has emphasized his view that my conduct in this case both before and after the declaration of the interference including the preparation

of the agreement between Snap-On Tools Corporation and Kenneth R. Larson of September 28, 1938 was the ordinary and expected thing which any lawyer confronted with the same circumstances would do.

Because a conflict of interests would likely result on account of this uncorroborated disclosure, I asked Mr. Larson to select an attorney on November 28, 1940 to represent him and the Precision Instrument Mfg. Co. I know that on November 29, 1940 Precision Instrument Mfg. Co. retained Mr. Hobbs of Haight, Goldstein and Hobbs. Mr. Hobbs then represented Mr. Larson and I am accurate in accepting service subject to that substitution in spite of what you say to the contrary. I had no other reason in asking Mr. Larson to select another attorney. If everything Mr. Thomasma has said could or will be proved, even then Larson is entitled to be defended by an attorney whether such be myself of some other attorney. I am not attempting to shift any responsibility. The retainer by Kenneth R. Larson and the Precision Instrument Mfg. Co. speaks for itself and neither Mr. Hobbs nor the writer is in a position to vary that particular situation in any way.

1920 As for the reporter, Mr. Fidler also acknowledged that I had done everything possible to hasten the transcript. I have personally advanced money to the reporter, I have written the reporter a letter, I have called him on innumerable occasions and insisted upon speed and you are now going to examine him. His reasons for not producing the complete transcript will be made known to you directly and I am very much interested in hearing his testimony. You have my assurance that I will not contact the reporter nor converse with him with respect to his appearance on Monday. I merely notified him in the presence of Mr. Schmid that he would be subpoenaed pursuant to your notice to me. I have no further word from him and his statements under oath will be just as enlightening to me as they most likely will be to you. You state that he has not correctly transcribed certain testimony. That is new to me as I have received no complaints from your office, except for the alleged omission of a few improper slang words used by the witness Ford and I had nothing to do with that.

I reiterate with emphasis that my conduct in this entire proceeding from the very inception of the transactions between Mr. Larson and Snap-On Tools Corporation, was and is with the highest regard to honesty, ethics, and a

conscientious endeavor to protect those who seek my services. I shall be willing to have you investigate the writer's conduct with the utmost exactness and stand ready to appear before any judicial officer you may select to examine my conduct. Your unwarranted, indiscreet, and incriminating assertions do not arouse my anxiety one bit. Certainly, I objected to certain questions and I was dutybound to so object. You should have objected more often and more strenuously than I, and you know that too. Judge Barnes upheld certain objections and I should have certified other unwarranted cross-examination which was in abundance throughout the deposition.

I am not going to permit my client or clients to unwarrantedly succumb to duress in the most outlandish type of manifestations. I do not intend to withdraw as counsel for Snap-On Tools Corporation, the assignee of equitable title only, until its interests are determined by the Patent Office and if necessary by the courts. By the same token, I did not propose to represent Mr. Larson and Precision Instrument Mfg. Co. after November 28, 1940 when I openly stated in the conference with Messrs. Fidler, Wacker, Allen, Thomasna, Johnson and myself, that henceforth I would serve only as counsel for Snap-On Tools Corporation in view of the fact that there doubtless will develop a conflict of interests between it and Precision Instrument Mfg. Co. irregardless of whether Thomasna or Larson were telling the truth. I certainly do not regard Mr. Thomasna as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker. Present corroboration of the competent type with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any further phase of the case for the present.

1921 In the conduct of the proceeding thus far, there is every indication from the completed cross-examination that the witnesses were placed in a state of fear by the cross-examiner. They were always reminded they were under oath and warned to testify under fear. The cross-examiner was argumentative with the witnesses and from now on when and if I am present in behalf of Snap-On Tools Corporation on any further cross-examination or adverse examinations, I shall insist that the witnesses be interrogated without the slightest imposition of stress, argumentation, duress or fear manifestations that are not

necessary for seeking the truth. If fair conduct is not henceforth manifested on cross-examination or the examination of adverse witnesses, I assure you the deposition will be stopped and the matter again certified to the district court.

So far as I have proceeded with full knowledge of all the facts, I shall not attempt to divest myself of any responsibility. I trust that you will not divest yourself of any responsibility in certain other matters that have also come to my attention. Your letter is a challenge to me. It dares me to proceed to protect the interests of Snap-On Tools Corporation. The challenge is such that I would like, with the approval of Snap-On Tools Corporation and their general counsel to even proceed to protect the interests of Larson as such may appear. He still is entitled to counsel and I do not expect you will deny that the Bill of Rights and the Constitution of the United States afford him the privilege even if everything Thomasna has said should be taken as the gospel truth (which is quite a swallow for anyone).

As for your charge that Snap-On Tools Corporation is delaying the interference without justification, this is synonymous with the charge that a poor man has no rights because he is too poor to meet your flaunting might and that Snap-On Tools Corporation has no rights because it had no right to ask security for the performance of a contract with a poor man who has no substitute security. I say neither meaning is correct and I personally would rather fail representing a just cause rather than be subdued by duress and unwieldy might. The cause of Snap-On Tools Corporation is a just one and will be protected. I fear no one and you may be assured I do not even fear your accusations. It would be an easy and uncourageous thing for me to formally withdraw as attorney for Larson and leave him unprotected to your machinations as Mr. Hobbs just returned my substitute power of attorney, but it takes courage and character to stand behind a legally weak man in his hour of need. That is my answer until Mr. Larson can retain another attorney.

I feel that this explanation and reply is warranted by your rather unbecoming accusations contained in the letter of December 19, 1940. Your copy of that letter is being sent to Snap-On Tools Corporation and their general counsel for further action as they deem proper.

Yours very truly,

HCA:EM.

1922 DEFENDANTS' EXHIBIT NO. 77.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

IN THE UNITED STATES PATENT OFFICE,

Before the Examiner of Interferences.

Kenneth R. Larson,
v.
Herman W. Zimmerman. } Interference No. 77,565.

DEMAND FOR COPY OF TRANSCRIPT OF TESTIMONY TAKEN ON BEHALF OF THE PARTY LARSON AND NOTICE OF THE TAKING OF DEPOSITIONS.

To: Mr. Harry C. Alberts,
38 South Dearborn Street,
Chicago, Illinois.
Attorney for the party Larson:

The party Zimmerman hereby demands that the party Larson furnish to counsel for the party Zimmerman a complete and correct copy of the transcript of testimony taken on behalf of the party Larson in the above-entitled interference, including the remainder of the testimony of the witness Landen C. Haines, the remainder of the testimony of the witness Kenneth R. Larson, and the whole of the testimony of the witnesses William J. Ladendorf, Clifford Whittaker and Walter Carlson. The party Zimmerman further demands that this complete and correct transcript be furnished to his counsel not later than 11:00 o'clock A. M., December 20, 1940.

The party Zimmerman also gives notice that the testimony of the following witnesses on behalf of the party Zimmerman will be taken at the offices of Davis, Lindsey, Smith & Shonts, 332 South Michigan Avenue, Chi-
1923 cago, Illinois, before Thomas B. Goodwill, 160 North LaSalle Street, Chicago, Illinois, a Notary Public in and for the County of Cook, State of Illinois, beginning at 9:30 o'clock A. M. December 23, 1940:

Mr. Thomas Rafferty,
10 North Clark Street,
Chicago, Illinois.

Mr. Herbert J. Schmid,
332 South Michigan Avenue,
Chicago, Illinois.

Mrs. Alice Larson,
1206 Center Street,
Des Plaines, Illinois.
Mr. R. E. Fidler,
332 South Michigan Avenue,
Chicago, Illinois
Mrs. Addie Carlson,
660 Pearson Street,
Des Plaines, Illinois,

and others, timely notice with respect to whom will be given as the taking of testimony progresses. Testimony will proceed from day to day and you are invited to attend and cross-examine.

Attorneys for the Party Zimmerman.

Receipt of the above Demand for Copy of Transcript of Testimony Taken on Behalf of the Party Larson and Notice of the Taking of Depositions is hereby acknowledged this 18th day of December, 1940.

HARRY C. ALBERTS,
Attorney for the Party Larson of Record and substituted by M. K. Hobbs, November 28, 1940.

1924 DEFENDANTS' EXHIBIT NO. 79.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago.)

October 13, 1939.

Automotive Maintenance Machinery Co.,
2100 Commercial Avenue,
North Chicago, Illinois.
Attention Mr. Fred G. Wacker.

Dear Mr. Wacker:

I have just received from the Patent Office two notices declaring an interference, No. 77,565, between the Zimmerman Case "O" torque measuring wrench application and

a Larson (Snap-On) application, and also the Zimmerman Case "L" torque measuring wrench application and Larson. The notice papers that I received indicate that copies of the same were forwarded directly to you, so it will not be necessary for me to send you copies of them.

You will note that the preliminary statements are to be filed on or before November 13, 1939. I, therefore, suggest that Mr. Zimmerman get together all of his priority proofs respecting Cases "L" and "O" and go over the same with me at his earliest convenience.

I do not know Kenneth R. Larson, but it may be that he is your former employee who went to work for Snap-On and engaged in the manufacture of the infringing Snap-On tool at Des Plaines. If that is the case, a question of
1925 originality will probably arise between Larson and Mr. Zimmerman. That is, Larson may contend that the claimed features of the wrench disclosed in the Zimmerman applications were disclosed by Larson to Mr. Zimmerman. It seems to me that he would have to urge something like that in order to contest the interference, because surely Mr. Zimmerman had this invention (and probably had applications filed) prior to the time that Larson left you. In other words, if Larson's dates come after he left your employment (and I understand that you had developed the wrench before he left), then I don't see what possible chance he can have in this interference.

Counts 1 and 2 of the interference are taken from Zimmerman Case "L", while Count 3 is taken from Case "O". I have just glanced through my records in a casual way, and they seem to indicate that the Case "O" wrench was designed and fully disclosed by about the 6th of February, 1938. A more definite check through my records may indicate an earlier date and your records, of course, may well show a much earlier date than that above referred to. I merely refer to the February date as a mark for Mr. Zimmerman to shoot at.

With respect to Case "L", my records indicate that it came along about the middle of 1937, or earlier. However, in connection with Case "O", my examination of the records has been only a casual one, and I may be able to establish an earlier date than that by my records, including
1926 my diary. I know Mr. Zimmerman made numerous drawings of various forms of wrenches of this general type and he can very readily get together the information

desired. In preparing the preliminary statement, we will have to determine not only when the first drawing was made, but when the first written description was made and when the invention was first disclosed to others. We will also have to determine when you first finished a full-sized device and successfully operated the same. In addition to the foregoing, we will want to determine whether or not there were any acts or facts outside of disclosure, first drawing, first description, etc., which, if proven, would establish conception of the invention at an earlier date than that which we will allege with respect to the matters above referred to. In other words, you will proceed in the preparation of this preliminary statement as in the statements taken care of within the last five or six months.

With kindest regards, I am

Very truly yours,

R. E. Fidler.

F:T.

Get dope on both early Snap-On and Ammco wrenches.

1927 DEFENDANTS' EXHIBIT NO. 80.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co., North Chicago, Ill.)

November 9, 1939.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan,
Chicago, Illinois.
Attention: Mr. R. E. Fidler.

Dear Mr. Fidler:

Re: Larson vs. Zimmerman Interference.

I am sending you herewith copies of affidavits of Harold J. Tallett and Anna Melcer with respect to telephone conversations that they had with Snap-On-Tool Corp., and Precision Instrument Mfg. Co. respectively.

We are keeping the originals of these affidavits for our files and you may keep these copies if you wish.

I am also enclosing a Dun & Bradstreet statement on the Precision Instrument Mfg. Co. of Des Plaines, Illinois on which you will note that George Thomasma is shown as

vice-president. Please return this statement to us for our files when you have had an opportunity to look it over.

As I understand it you will secure the incorporation papers of the Precision Instrument Mfg. Co. to ascertain whether or not George Thomasma was one of the incorporators.

For your information we discharged George Thomasma on June 5, 1939 because of our suspicions and his inability to answer our questions either satisfactorily or convincingly. Likewise by his own admission he had taken tools out of our shop without our consent, which was in itself adequate cause for discharge.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.,
By Fred G. Wacker,
Fred G. Wacker,
Pres.

fgw/ms.
3 enc.

1928 DEFENDANTS' EXHIBIT NO. 81.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago.)

November 13, 1939.

Mr. Fred G. Wacker,
Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Dear Mr. Wacker:

Torque Measuring Wrench
Interference No. 77,565
Larson v. Zimmerman.

I wish to thank you for your letter of November 9th enclosing copies of affidavits by Harold J. Tallett and Anna Melcer respecting the present whereabouts of your former employee, George B. Thomasma. Your letter also enclosed a Dun & Bradstreet statement covering Precision Instrument Manufacturing Co. of Des Plaines.

The information contained in your letter and in the affidavits is, indeed, interesting. The facts indicate that the whole situation confronting your opponents in this inter-

ference is quite messy, and I will be somewhat surprised if they fight the matter. If they do contest the interference they surely will have a lot of explaining to do.

I suggest that you keep on the alert for every bit of information you can secure in this matter.

1929 The Dun & Bradstreet report is quite interesting and I am checking further to determine whether Thomasma was one of the incorporators of the Precision Instrument Manufacturing Co. The Dun & Bradstreet report is returned herewith, a copy of the same having been made for my file.

The next step in the Patent Office end of the matter should be approval of preliminary statements and the making of the Larson application accessible to us. I will keep you advised as the situation develops.

With kindest personal regards, I am

Very truly yours,

F-Cs. R. E. Fidler.
Enc.

1930 DEFENDANTS' EXHIBIT NO. 81-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

The following report is furnished, at your request, under your Subscription Contract, in strict confidence, by Dun & Bradstreet, Inc., as your agents and employees, for your exclusive use as an aid in determining the advisability of granting credit or insurance, and for no other purpose.

Please note whether name, business and street address correspond with your inquiry.

Precision Instrument Mfg. Co. Mfr. Instr. Tools.
Des Plaines, Ill.,
Cook County,
1846 Miner Street.

Kenneth L. Larson, President.
George Thomasa, Vice-President.
Walter Carlson, Sec. & Treas.
Directors: The officers comprise the Board.
Of 779-784 2 September 5, 1939.

History.

This is an Illinois corporation, chartered during December 1938, with 1,000 shares of stock, par value $10. As of

September 1, 1939, capital stock of $8,200 was outstanding, and a Surplus of $6,300 was indicated.

Kenneth L. Larson, is aged 32, married, a native of Missouri, of Swedish descent. He was engaged in the auto supply business for a while, and previous to that was employed in that line.

Thomasa is aged 37, married, and a native of Chicago, Illinois of Greek descent. He was employed as a machinist for several years, and more recently was engaged in the restaurant promotion work. He is a resident of Chicago, Illinois.

Walter Carlson is aged 48, and married, a native of Germany, now naturalized. Carlson engaged in the beauty shop line here about four years. He has also been in the same line at Arlington Heights and Barrington, Illinois. A beauty shop is conducted at Des Plaines, Illinois, and is managed by his wife.

Method of Operation.

The company sells a wrench which has an instrument on it for determining the foot pounds pressure or tension. It sells entire output to one Kenosha Wisconsin concern, which has over 500 salesmen selling to mechanics. Sales are for cash and on thirty day terms.

Space is occupied in a building of brick construction, and located on a side street. Four persons are employed.

Fire Hazard.

Rents the one-story building, which is in good condition. A vacant factory building adjoins one side, and an auto wrecking concern the other. Premises are orderly.

Fire Record: No fires reported.

Statement.

From estimates of September 1, 1939:

Assets:		Liabilities.	
Cash in bank	$ 400.00	Accts. Payable	$ 1,000.00
Accts. Rec.	1,200.00	Sales lien	400.00
Merchandise	3,500.00		
		Total Current	1,400.00
Total Current	5,100.00	Capital Stock	8,200.00
Mach. & Fix.	3,300.00	Surplus	6,300.00
Escrow Acct.	1,500.00		
Patents	6,000.00	Total	15,900.00
Total Assets	15,900.00		

Net sales from January, 1939 to September 1939 $12,000.

Monthly rent $20.

Sales lien covers part of equip. Aggregate monthly payments $47.

(Signed) September 1, 1939 (by) Walter Carlson.

1931 The item Patents, $6,000, would be an intangible asset.

It is reported that the company has met with a favorable trade response from the start. The officers are regarded as being capable.

Payments:

Locally, Payments are reported prompt.

Summary.

A comparatively new company, but affairs are in hand, and payments are reported prompt.

9/5/39 (784) X 31

1932 DEFENDANTS' EXHIBIT NO. 82.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

November 21, 1939.

Mr. Fred G. Wacker,
Automotive Maintenance Machinery Co.,
2109 Commonwealth Avenue,
North Chicago, Illinois.

Re: Interference No. 77,565—
Larson vs. Zimmerman.

Dear Mr. Wacker:

I have just received a letter from the Patent Office giving us the serial number and filing date of the Larson application. Larson filed October 1, 1938,—Serial No. 232,723. That is five months later than the filing of the Zimmerman Case "O" application, and over ten months after the filing of the Zimmerman Case "L" application.

Larson undoubtedly filed a preliminary statement because the Patent Office has set a motion period, which expires December 18, 1939, and has also set times for the taking of testimony.

I have ordered a copy of the Larson application and as soon as I have had an opportunity to examine the same, I will advise whether we should file any motions during the motion period.

As suggested in your letter of November 9, we have investigated the incorporation papers of the Precision Instrument Company, and copy of a report dated November 14, 1938, covering the same is enclosed for your file.

You will note from this report that George B. Thomasa was one of the incorporators. Kenneth R. Larsen and Walter Carlsen were other incorporators. In the corporation papers, Thomasa's name is spelled "Thomasa" and he signed that way. From the affidavit submitted with your letter of November 9, the name of this party appears to be George B. Thomasma. I wonder if we can determine definitely what his true name is. Maybe he was trying to cover up his identity by using an alias, so to speak, in the corporation matter. I also understand that Larson's name

is Larson in the application papers, but the corporation papers show it to be Larsen. This discrepancy may be significant.

In any event, we have pretty definite proof that Thomasa (or Thomasma) was conducting the other company while in your employ. Of course, we will have to get back of the date of incorporation to link Thomasa and Larson, because the Larson application was filed on October 1, 1938. I believe that you have the evidence of other of your employees to the effect that, long before October 1, 1938, Thomasa was meeting Larson, was quite friendly with him and was carrying on somewhat mysteriously. Any information you may be able to gather in that respect will be helpful in the event that this matter comes to a showdown.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F:T.
Enclosure.

1934 DEFENDANTS' EXHIBIT NO. 82-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

11-14-38.

Precision Instrument Manufacturing Company

Certificate of Incorporation dated 12-6-38 and filed 12-6-38, and recorded 12-8-38.

Incorporators:

Kenneth R. Larsen, 1206 Center St., Desplaines.
George B. Thomasa, Potter Road, R. F. D., Desplaines.
Walter Carlsen, 660 N. Pearson St., Desplaines.

Address of initial registered office is 1206 Center St., Desplaines, and name of initial registered agent is Kenneth R. Larsen.

Article 4.

The purpose or purposes for which the corporation is organized are:

"for the purpose of manufacturing and selling tension wrenches under U. S. Patent Application No. 232,723, and

to manufacture, construct and deal in machinery, appliances and plants of every nature, kind and description whatsoever. To acquire by purchase, lease or otherwise, and to manufacture and construct machines and tools of any kind and character. To apply for or purchase or otherwise acquire, and to grant licenses for the use of, to sell, assign or otherwise deal in and use patents, patent rights, privileges, licenses, trade-marks, trade names, devices, and improved or secret processes of every sort or description necessary and incidental to those purposes; and also to carry on a general manufacturing, wholesale and retail merchandise business."

1935 Article 5.

Corporation authorized to issue 1000 shares divided into one class at $10.00 per share.

Article 6.

The capital and number of shares to be issued by corporation before it shall commence business and the consideration to be received by the corporation therefor are:

Class of Shares	Number of Shares	Consideration
Capital	760	$7600.00

Article 8.

Estimated value of all corporate property in Illinois and owned by corporation during next year (1939) is $10,000.00.

Estimated gross business is $24,000.00.

Signed by as incorporators } Kenneth R. Larsen.
Walter Carlsen.
George B. Thomasa.

Oath and acknowledgment signed on 12-1-38.

Certificate of Incorporation was mailed to
A. L. Sengstock,
311 First National Bank Bldg.
Desplaines, Ill.

Doc. No. 12246425.

Recorded in Book 1193—Page 309.

1936 DEFENDANTS' EXHIBIT NO. 83.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.—North Chicago, Ill.)

November 24, 1939.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan,
Chicago, Illinois.

Attention: Mr. R. E. Fidler.

Dear Mr. Fidler:

Re: Interference No. 77,565.
Larson vs. Zimmerman.

This will acknowledge receipt of your letter of November 21 under the above subject.

We have checked through our Social Security records and find that Thomasma was listed as George Ben Thomasma. These records were typewritten from pencil blanks filled in by each of the men and we do not have the original from which this record was taken. We do, however, have many of his salary checks endorsed "Geo. B. Thomasma".

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.,
By Fred G. Wacker,
Fred G. Wacker,
Pres.

fgw/s.

1937 DEFENDANTS' EXHIBIT NO. 84.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

June 4, 1940.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention: Mr. Fred G. Wacker, Pres.

Dear Mr. Wacker:

Re: Larson v. Zimmerman.

In your letter of June 3rd you ask "What makes you feel that the interference might not go forward?". Any answer to this question must necessarily be speculative.

I view the situation in the following manner. Larson is the junior party, that is, he filed his application about six months after the Zimmerman case and the burden of proof in this interference is on him. He knows the filing date of the Zimmerman application and if he can not prove a date of invention a substantial time prior to your filing date he might not be inclined to go to the expense of taking testimony in an attempt to prove his case. An interference, by the time it reaches the stage of investigation for the purpose of taking testimony and the actual taking of testimony, becomes somewhat expensive. If the chances appear to be against the junior party (Larson) winning, he might decide not to contest the matter. Of course,

Snap-On owns the application and will probably be
1938 the one to stand the expense but even at that they
might not be inclined to fight the matter where they do not see their way clear to success. Snap-On as well as Larson certainly knows the factual situation behind this interference and, if I am correctly informed as to that situation, I can not see how they could hope to win. Obviously, they did not think they were the prior inventors of subject matter common between their wrench and yours. Otherwise, in filing their application they would have inserted claims which might read on your construction. There wasn't a single claim in the Larson case broad enough to read on your wrench until the Examiner saw fit to declare

this interference. Another thing that might indicate that they do not take this interference seriously is the slipshod manner in which their attorney has handled the interference. He failed to file a brief in answer to our motion to amend and he slipped up in making a claim for purpose of interference and I don't see how anyone can take the interference seriously and do that. Therefore, it is not at all unlikely that, if Snap-On carefully considers the entire situation, they might decide not to fight the interference.

As the matter now stands the interference has to be reformed and that will require the filing of new preliminary statements as to at least two claims. After that has been done the Patent Office will set times for taking testimony. Larson has to take his testimony first, and if he does not take any testimony we can then file an affidavit 1939 stating that fact and ask that judgment be rendered on the record against him. Even though the interference took that course the interference might well drag on for a period of six or eight months. If they should decide to fight the matter and, therefore, take testimony the interference might well drag along for a period of two or three years, depending upon the extent to which they may want to fight. This is the best that I can do as the length of time that it will take to wind up the interference.

Of course, Snap-On might be endeavoring to delay as long as possible the issuance of a patent to you. If that is their plan, they will do everything possible to prolong the interference, but I assure you that if this interference does proceed I am going to take every step possible to avoid delay, unless, of course, you wish to take a different course.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F:C

1940 DEFENDANTS' EXHIBIT NO. 85.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

July 22, 1940.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565.

I have just been notified by the Patent Office that the following times for taking testimony have been set:

Testimony in chief of Larson to close September 18, 1940.

Testimony of Zimmerman to close October 18, 1940.

Rebuttal testimony of Larson to close November 2, 1940.

Final hearing January 17, 1941, at 11: a. m.

There isn't anything for us to do in this matter except to wait and see whether or not Larson takes testimony. If he takes testimony, it may be necessary for us to also take testimony. As I have previously said, though, it will be a surprise to me if Larson takes testimony.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler,
N. J

F:J.

1941 DEFENDANTS' EXHIBIT NO. 86.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.—North Chicago, Ill.)

July 24, 1940.

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

Re: Larson v. Zimmerman
Interference No. 77,565.

Replying to your letter of July 22 under the above subject I am pleased to note that this interference is coming to a head and that the patent office has established dates for taking testimony as indicated in your letter.

I hope you are right in your thought that you will be surprised if Larson takes testimony.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.,
Fred G. Wacker,
By Fred G. Wacker,
Pres.

fgw/ms

1942 DEFENDANTS' EXHIBIT NO. 87.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

Aug. 7, 1940. Discussed with Fidler and asked him to make an investigation. F. G. W.

August 5, 1940.

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565

In view of the fact that this interference has reached the stage where we are entitled to see Larson's preliminary statement, I had our Washington associates secure a copy of such statement, and a copy thereof is enclosed for your information.

This preliminary statement was one of the most surprising things that I have come across in a long time. You will note that Larson alleges dates that antedate Zimmerman's dates by about three years. I just can't believe it. There must be something wrong with this picture. For your convenience, I set forth the Larson-Zimmerman dates in comparison as follows:

1943

Zimmerman	Conception	Larson
May 28, 1937	Disclosure	July 15, 1934
May 28, 1937	Drawing	Sept. 12, 1934
May 28, 1937	Description	May 20, 1936
Sept. 10, 1937	Reduction to Practice	Sept. 20, 1938
Aug. 28, 1937	Filed	Sept. 10, 1934
Nov. 22, 1937		Oct. 1, 1938

It is interesting to note that Larson will contend that he conceived the invention on or about July 15, 1934, such act being based upon the making of a pattern. Even though he alleges that early date for conception, it was not until

about two years later (May 20, 1936) that he made the first drawing. Isn't it quite customary to have a drawing in order to make a pattern? Do you see anything wrong with this part of the picture?

Also, he alleges the successful operation of a wrench of this kind on September 10, 1934, but he didn't disclose it to anyone until September 12, 1934. This is, indeed, unusual and I am now wondering whether he can actually prove a reduction to practice.

You will also note that it was more than four years from the time he alleges reduction to practice that Larson filed his application. This, of course, raises a question as to what became of the wrench that was reduced to practice and whether or not it went into public use so that it would constitute a bar to the grant of a patent on the Larson application.

1944 This wide gap in dates presents still another question,—namely, whether or not the thing alleged to have been a reduction to practice was nothing more than an abandoned experiment. If Larson did something back in 1934 and then did nothing further with it until he was prompted to do so by your activities three or four years later, we might be in a position to show that his early work was nothing more than an abandoned experiment.

A question of diligence may also be involved, particularly if we can show that Larson's early work was not a reduction to practice, assuming, of course, that he did conceive something back in 1934. Naturally the foregoing remarks are merely speculative because we do not know the nature of Larson's proofs. We know some of the extraneous facts, including the activities of your former employee, and, in the light of them, I yet cannot bring myself to believe that Larson had this wrench three or four years before you developed it.

These situations are, sometimes, most difficult to handle. They require very careful and thorough investigation. If there is something wrong with the Larson picture, it may require such an investigation to learn the true facts. Such an investigation might well begin with the obtaining of a complete history of your former employee's activities. There are also certain facts respecting Larson's activities that we ought to know in order to be able to intelligently cross-examine.

1945 When you have an opportunity, it might be well for us to discuss this phase of the matter. I expect

to be away the last two weeks of August and if you want to discuss the matter with me before that time, I will be glad to do so.

Very truly yours,

R. E. Fidler.

F-J
Enclosure

1946 DEFENDANTS' EXHIBIT NO. 88.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

August 16, 1940.

Mr. Fred G. Wacker
Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Dear Mr. Wacker:

Larson vs. Zimmerman
Interference No. 77,565

You will note by referring to the Larson preliminary statement submitted with my letter of August 5, that it deals only with the substituted counts 1 and 2 which grew out of your motion to add counts in the interference. The interference involves an addifional count 3, the dates with respect to which we are entitled to see.

The Patent Office had closed against us the original statement filed by Larson and, for that reason, we were not previously permitted to see Larson's dates with respect to count 3 which is based on the disclosure of Case O. I wrote to Mr. Glemser about this matter and he was finally able to secure a copy of Larson's original preliminary statement, a copy of which is enclosed for your information. I also enclose a copy of Mr. Glemser's letter transmitting the preliminary statement in question.

1947 You will be interesting in reading Mr. Glemser's letter because it indicates that he, too, has some doubts with respect to the dates alleged by Larson.

Very truly yours,

R. E. Fidler.

F-Cs.
Enc.

1948 DEFENDANTS' EXHIBIT NO. 89.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Sept. 21, 1940. Discussed with Mr. Fidler by phone. F. G. W.

September 20, 1940.

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565

While I was out of the city a few days ago my secretary informed you that Larson's attorney was asking for a thirty day extension of time for taking the Larson testimony. As I understand it, you, at that time, expressed the thought that you were not in favor of giving any extension but that, if we thought that you should consent to some additional time, because Larson could get it anyway if he went to the Patent Office, you would be guided by our judgment in the matter.

Accordingly, my secretary called Mr. Alberts, Larson's attorney, and told him that while you were not at first in favor of any extension of time you finally consented to ten or fifteen days. Alberts then wanted twenty days but this was refused and a stipulation was finally entered into giving him a fifteen day extension of time. This means that Larson must begin the taking of his testimony and must complete the same by October 3rd.

1949 I have some very interesting things to tell you about this interference and I hope that you can get in to see me sometime within the very near future so that I can tell you what it is all about.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F:J

1950 DEFENDANTS' EXHIBIT NO. 90.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

October 19, 1940.

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois
Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference 77,565

This morning I was somewhat surprised to receive from Larson's attorney a notice of taking testimony in the above matter. A copy of such notice is enclosed.

You will note that they have deferred the beginning of their testimony until the very last day, October 24th. I have investigated this phase of the matter and I find that there isn't anything that I can do about it. If they start on October 24th and continue diligently, the Patent Office will receive their testimony even though it extends beyond the time now set. Of course, if they should delay and attempt to postpone, that's another matter. I feel that the Patent Office may listen to us and apply the rule strictly against Larson should an attempt of that kind be made.

According to this notice, I will appear at the office of Larson's attorney next Thursday at 10:00 A. M. for
1951 the purpose of cross-examining the witnesses. If you wish to be present, that is your privilege, and I will be very glad to have you there.

Very truly yours,

R. E. Fidler.

F:J
Enclosure

1952 DEFENDANTS' EXHIBIT NO. 91.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

November 4, 1940.

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565

During our conference last Friday you left with me the following files:

1. File covering the sale to K & L Motor Rebuilders, Des Plaines, Illinois, of an AMMCO oversized piston fixture in October, 1937.

2. File covering sale to K & L Motor Rebuilders, Des Plaines, Illinois, of a piston pin hole boring machine in May, 1936.

You also left with me a letter dated October 31, 1940, signed by Mr. McFarland and Mr. Strodtz, two of your employees, respecting previous contacts between Mr. Thomasma and Mr. Larson.

These matters will be retained in my file until the interference matter has been disposed of.

Very truly yours,

R. E. Fidler

F:J

1953 DEFENDANTS' EXHIBIT NO. 91-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

October 31, 1940.

Mr. R. E. Fidler
Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Dear Sir:

In the spring of 1939 we rode to the factory of Automotive Maintenance Machinery Co. in North Chicago, Illinois with George Thomasma in his car on an evareg of about five days per week. We parked our own cars at Thomasma's home in Park Ridge from which we drove back and forth into Chicago. On a number of occasions, probably a dozen or more, upon returning to Thomasma's home from North Chicago, he was met there by Mr. Larson.

On several occasions Thomasma took us to the K & L Auto Supply in Des Plaines to purchase auto parts. Larson and his partner operated the supply house and sold Thomasma the parts which we bought from him.

Very truly yours,
Howard Strodtz,
Chas. McFarland.

1954 DEFENDANTS' EXHIBIT NO. 92.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

November 23, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565

After talking to you yesterday about a handwriting expert, I tried to get in touch with Mrs. Keeler but was

unable to do so. I could get no information as to when she would be available for a conference with me.

In view of the fact that I want the opinion of an expert before the conference next Thursday, I got in touch with a general attorney here in Chicago who suggested that I communicate with a Mr. Rudolph B. Salmon, who enjoys a rather high reputation with respect to handwriting matters. Accordingly, I contacted Mr. Salmon and he agreed to take the matter in hand. I am getting the necessary materials to him this coming Monday, and he has promised a report before Thursday.

While I was in conference with Mr. Salmon he made a cursory examination of the drawing in question, in comparison with another drawing made by Thomasma, and he said that there were many items of similarity which
1955 indicated that both drawings were made by the same man. He, of course, would not express himself finally in the matter until he has made an examination of the kind usually made by handwriting experts.

Very truly yours,

R. E. Fidler.

F:J

1956 DEFENDANTS' EXHIBIT NO. 93.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shouts—Chicago.)

(Handwriting in margin) Will meet at 9 A. M. unless I advise Allen to the contrary.

November 23, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565

I called Mr. Alberts, Larson's attorney, this morning and told him that next Thursday morning would be satisfactory to you for the conference relating to evidence taken in the above interference. Mr. Alberts said that Mr.

Johnson would arrive here from the East at about 9:45 A. M. on that day and that they would be in my office between 10:15 and 10:30. If anything should come up to change the plans, I will get in touch with you immediately.

I suggest that you come in next Thursday morning early enough to preliminarily discuss matters to be taken up at the conference. I understand that Mr. Allen will be present, if he is in town. I think he should be here, by all means, if he can arrange it.

I have made arrangements for both Mr. and Mrs. Thomasma to be in our office that morning. Whether 1957 or not I will call them into the conference, will depend upon developments at the conference.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F:J.

1958 DEFENDANTS' EXHIBIT NO. 94.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

(Handwriting in margin) We to get signed copy of reassignment from Snap-On to Precision. Notification by Snap-On to their customers.

December 21, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565

Confirming my last telephone conversation with you yesterday,—

All parties are in agreement respecting settlement of this interference. I will not go into detail herein regarding matters leading up to the settlement because I believe you are as familiar with them as I am.

I have prepared two agreements, one between you and

Snap-On and one between you and Precision and Larson, covering the matters agreed upon. A duplicate-original and one copy of each of these agreements are enclosed. I also enclose the original of the Larson-Precision agreement. In view of the fact that these agreements cover the matter as agreed to by you over the telephone, I feel that you will find both agreements in satisfactory form. Of course, if there is anything that you see that is not correct, please do not hesitate to call me at once.

1959 The enclosed duplicate-original of each agreement, as well as the original of the Larson-Precision agreement (bound copies) should be executed by you and returned to me immediately so that it will be in my hands the first thing next Tuesday morning. You will note that you are to sign as President and that the seal of your company must be applied. You will also note that you must acknowledge the execution of the instruments. I have indicated the places where you should sign.

I have also delivered the original and a copy of the Snap-On agreement to Mr. Alberts for transmission to Snap-On today. Mr. Alberts expects Snap-On to sign the agreement Monday so that it will be in his hands early Tuesday morning. In finally closing the matter, we will exchange signed copies.

I have also prepared an assignment covering transfer of the Larson application to you as well as a concession of priority from Larson to Zimmerman. I am not now enclosing copies of these papers but will do so as soon as the matter is fully taken care of.

With kindest personal regards, I am

Very truly yours,

B. E. Fidler.

F:J
Enclosures

1960 DEFENDANTS' EXHIBIT NO. 95.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago.)

Via Registered Mail

December 26, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,563

Confirming our telephone conversation of a few moments ago,—

The following papers have been fully executed in settlement of the above interference:

1. Agreement between Snap-On and Automotive.
2. Agreement between Automotive, Precision and Larson.
3. Assignment of Larson interfering application Serial No. 232,723 by Snap-On to Precision and Larson.
4. Assignment of the Larson interfering application Serial No. 232,723 by Precision and Larson to Automotive.
5. Concession of Priority by Larson to Zimmerman.
6. Mutual release between Precision, Larson and Thomasma.

All of the foregoing signed documents, excepting signed copies of the contracts delivered to Precision, Snap-On and Larson, are now in my hands and I enclose the following documents for your files:

1961 1. The Snap-on-Automotive agreement.

Memo: The signed original and a duplicate original are enclosed. I suggest that you sign the original exactly like you signed Snap-On's copy (which was delivered to Snap-On) in order that your file may be complete. You are to retain both of these signed copies. Although the duplicate-original is superfluous, I would preserve it anyway.

2. The original and duplicate-original of the Automotive-Precision-Larson agreement.

Memo: You will note on page 4 of both the original and duplicate-original that the words "and sizes", in line 2, and "of each size", in line 3, have been stricken. Mr. Hobbs and I agreed to this over the telephone the other day, and you gave your approval to me over the telephone this morning, at which time I explained the reason. It is practically impossible for Precision, with their bookkeeping methods, to specify particular sizes as it is customary for Snap-On to change orders already given with respect to particular sizes.

You will note that Mr. Larson has initialed this change in both of the signed copies. You should do likewise and then return to me the signed duplicate-original which will be delivered to Precision and Larson.

3. The Precision-Larson-Thomasma mutual release that I have is being delivered to Mr. Thomasma. However, a photostatic copy of the same is enclosed for your information and file. I will likewise preserve a copy for my file.

4. I am retaining the original assignments and concession of priority for they must be transmitted to the Patent Office. I am enclosing, though, copies of these showing exactly how and when they were signed.

Memo: I may add that the Snap-On assignment does not have the kind of an acknowledgment clause that I want and a new one will be given to us. The assignment in its present form will, however, serve our immediate needs.

In completing the deal, Mr. Thomasma turned over to me his Precision stock certificate, the same being assigned in blank. This stock certificate was delivered to Mr.
1962 Hobbs, attorney for Larson, at the time of exchange of settlement papers on December 24th. At that same time Mr. Hobbs delivered to me a check from Snap-On Tools Corporation to you for $500.00, which is the consideration mentioned in the Automotive-Precision-Larson agreement. As you know, this check was to be turned over to Mr. Thomasma for the delivery of his stock to me and, in turn, Precision, and to complete that phase of the deal, I delivered to Mr. Thomasma our firm check for $500.00. I now enclose the check from Snap-On to Automotive and I would appreciate it if you would either endorse the same so that it will be payable to our firm or give me a new

check for our firm. In talking to you over the telephone this morning I discussed this matter and you suggested that I send this particular check on to you and that you would take care of the same right away.

The next thing to be done in this matter is the recording of the above assignments, following by the filing of the Concession of Priority. As soon as that is taken care of, we will endeavor to get Case "L", which is directed to broad subject matter, allowed immediately. My thought is to get this done so that the final fee could be paid by next Thursday. If this could be done, the patent should issue the third Tuesday from January 7th, 1941, or January 28, 1941.

The statements called for by the above agreements will come forward within the next day or so. I will send them on to you as soon as they are received.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F:J
Enclosures

1963 DEFENDANTS' EXHIBIT NO. 96.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 26, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Larson v. Zimmerman Interference No. 77,565

For your information and file, I enclose herewith a copy of a letter which I have just written to Mr. Rafferty, the reporter who took the Larson testimony.

Very truly yours,

F:J
Enclosure

1964 DEFENDANTS' EXHIBIT NO. 97.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman Interference No. 77,565

I wish to thank you for your very kind letter of December 27th respecting the above matter and returning the initialed duplicate-original Automotive-Precision-Larson agreement and the Snap-On check for $500.00.

The duplicate-original agreement above referred to has been forwarded to Mr. Hobbs, attorney for Precision and Larson.

I have not yet taken the steps necessary to terminate the interference because I cannot do that until I receive a revised assignment from Snap-On to Precision and Larson. As soon as I get such assignment the necessary steps will be taken. Any action that I take will necessarily include careful review of all the applications, including the Larson application which you now own, to determine whether or not there are additional claims that we might se-
1965 cure for your further protection. That, as you know, is a rather ticklish proposition because we do not want to do anything that might cause the Examiner to react against us with respect to claims already allowed.

We are all much relieved due to the fact that this most unpleasant situation is behind us. I want you to know that we all very greatly appreciate your wholehearted cooperation which was necessary in order that we might attain the end sought. I appreciate that more expense was involved than we originally anticipated but it was entirely unavoidable and, I assure you, as I will explain when I next see you, that the expense incurred was the very minimum under the circumstances.

I understand that you expect to be in Chicago within the next few days at which time you will be in to see me. I do not think that you should delay that visit any longer

than absolutely necessary because there are some matters that I want to review with you which may be of some assistance in your further activities.

Very truly yours,

F:J R. E. Fidler

1966 DEFENDANTS' EXHIBIT NO. 98.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

January 24, 1941

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Interference No. 77,565 Settlement Matters

Confirming our telephone conversation of this morning respecting the above matter and referring to your letter of January 23rd,—

So far as Precision is concerned, the agreement was revised so as not to call for sizes of wrenches. However, the Snap-On agreement was not so changed. As you have noted, the Snap-On statement of January 8th does not refer to sizes, whereas it should do so. I have, therefore, written to Mr. Alberts requesting that a complete statement complying with the agreement be furnished. A copy of my letter is enclosed.

In writing to Mr. Alberts I also refer to his letter of January 13th which is in reply to my letter of January 10th, a copy of which was sent to you with my letter of January 10th. I note that I inadvertently overlooked sending you a copy of Mr. Alberts' letter of January 13th 1967 and such copy is now enclosed. This letter clearly indicates the attitude of Snap-On,—always wanting something without giving anything in return. You will note that Alberts requests that I inform him of any changes that we might make in claims already allowed in the Zimmerman applications as well as any additional claims that might be allowed. In answering this I say that I will be

glad to so inform him, assuming, though, that he will keep me fully informed respecting changes in design made by Snap-On for the purpose of evading the Zimmerman claims or otherwise. In other words, if they plan to keep us in the dark respecting changes in design I see no reason why we should keep them informed respecting the prosecution of the applications. You will note that that question was sidetracked by Mr. Alberts in his letter of January 13th.

With kindest personal regards, I am

Very truly yours,

F:J R. E. Fidler

Enclosures

1968 DEFENDANTS' EXHIBIT NO. 99.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

January 31, 1941.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Interference No. 77,565.
Automotive-Snap-On Settlement Agreement.

I enclose a copy of Mr. Alberts' letter of January 30th enclosing a revised Snap-On statement as to wrenches on order and undelivered, which statement is intended to conform to the settlement agreement. The original of the revised statement is enclosed. You will note that it includes reference to sizes and the number of each size yet due on order.

You will note the second paragraph of Mr. Alberts' letter respecting the substitution of sizes. I do not see that any difficulties should arise in this respect but the record should be clarified for once and for all as to this phase of the matter.

You will remember that the agreement originally submitted to Precision specified that their statement should also include sizes and they took the position that they could

not specify sizes because Snap-On had the right; with
1969 respect to any particular order given to Precision,
to change the order as to the size of wrench required.
For that reason, we then struck from the Precision agreement reference to sizes so far as the statement was concerned. Upon doing this Mr. Alberts called me and wanted to do the same thing with respect to the Snap-On agreement, but I refused because they were in a position to not only state the wrenches on order but the sizes of wrenches on order and the sizes of wrenches yet to be delivered. The present statement gives that information.

I did not discuss the matter with Mr. Alberts from the standpoint of giving his client any right with respect to exchange of wrenches of different capacities to suit the individual needs of customers. They had on order at that time certain wrenches. They could not take any future orders for wrenches coming within the scope of the agreement and, if it is Mr. Alberts' thought that they have the right to take additional orders and substitute them for sizes called for in orders already taken as of the time of the settlement, he is entirely wrong. The agreement particularly provides that they shall not take any future orders for wrenches coming within the scope of the agreement. Now, if they have certain orders already on hand calling for certain sizes and they want to juggle those sizes around with respect to particular orders, I do not see that we can object to that, but they cannot take any new orders for different size wrenches for customers already having orders on hand and substitute such sizes for sizes called
for by the orders on hand. Certainly, no leeway was
1970 given to Precision in this respect and Snap-On cannot find any escape in that direction because of anything that happened with respect to Precision so far as the requirements of the settlement are concerned.

I would like you to give some thought to this matter and let me know your viewpoint immediately. I want to write Mr. Alberts without delay for the purpose of avoiding misunderstanding in the future.

With kindest personal regards, I am

Very truly yours,

F. J. R. E. Fidler.

P.S. 1 copy of the enclosed statement is being retained in my file for future reference.

R. E. F.

1971 DEFENDANTS' EXHIBIT NO. 100.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 27, 1941.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Precision—Snap-On Torque Wrench Matter.

I wish to acknowledge receipt of the copy of your letter of June 25th to Mr. Thomasma inquiring as to the present status of Precision.

In view of the fact that about six months' time has passed since you entered into agreements with Precision and Snap-On respecting the clean-up of wrench orders, I believe it would be in order for you to write to Snap-On and Precision and ask them to inform you directly as to the status of the matter in question.

Mrs. Thomasma told me the other day that Precision is still manufacturing some wrenches. I cannot say that her information is accurate but it might well be that, due to their inability to secure proper materials, they have not been able to complete all orders. Six months is a long time, though, and I would not hesitate to inquire of these people as to whether or not the orders have been completed.

Very truly yours,

F. J.

1972 DEFENDANTS' EXHIBIT NO. 101.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

November 29, 1940.

Raymond E. Fidler, Esq.,
332 South Michigan Ave.,
Chicago, Illinois.

Dear Mr. Fidler:

We have been engaged by Precision Instrument Manufacturing Company of DesPlaines to represent it and its

inventor's interest in what we understand is an interference in the Patent Office between the parties Zimmerman and Larson. We have some understanding of the circumstances and situation which has developed and would like to confer with you about the matter at your early convenience—by Monday if possible.

Will you please 'phone to me upon receipt of this letter so that we can arrange a conference.

Yours very truly,

MKH:FS.

1973 DEFENDANTS' EXHIBIT NO. 102.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 6, 1940.

Mr. George Thomasma
Potter Road
Park Ridge, Illinois

Dear Sir:

We represent Precision Instrument Manufacturing Company located at Des Plaines, Illinois. You appear upon the records of the company to hold a certificate or certificates for 260 shares of the stock of the company. The stock is unlawfully held by you. Demand is therefore made upon you on behalf of the company that you forthwith surrender, for cancellation, your certificate or certificates of stock. If this matter can be treated and cared for amicably, litigation will be avoided. No transfer by you of the stock will be recognized by the company.

Yours very truly,

Haight, Goldstein & Hobbs,
By

MKH:FS

1974 DEFENDANTS' EXHIBIT NO. 103.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts—Chicago.)

November 19, 1940.

Mr. Thomas L. Raftery
10 North Clark Street
Chicago, Illinois

Re: Larson vs. Zimmerman—Interference No. 77565
File 11484

Dear Sir:

I have been absent from the city for over a week and had expected that the transcript in the above entitled case would be completed long before this time. Even considering everything that was involved in this deposition and perhaps your present large volume of other work, nevertheless I have never received such poor service in years past from other reporters. I personally do not feel there is any excuse for this delay and am rather certain that Mr. Fidler is being seriously inconvenienced on that account.

Contrary to my usual policy, I have given you three advances in different amounts and committed myself to pay Mr. Fidler $20.00 which he erroneously advanced to you. In view of these special accommodations I have made to you, I would think that you would make a special effort to promptly complete this transcript rather than extent it.

I request, therefore, that you lay all other work aside and promptly complete this transcript in that it will take several days to read over the testimony and make stenographic corrections which appeared in one portion of the transcript delivered some time ago and there doubtless will be other corrections.

Consequently, time is of the essence. Will you, therefore comply with my request and promptly complete this transcript.

Yours very truly,

Harry C. Alberts.

HCA:EM
Cc: Mr. R. E. Fidler

1975 And on, to wit, the 18th day of June, 1943 came the Plaintiff by its attorneys and submitted its certain Proposed Findings of Fact and Conclusions of Law in words and figures following, to wit:

1976 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause, Consolidated of Civil Actions No. 4382 and No. 4451, having come on to be heard for the entry of Findings of Fact and Conclusions of Law, and the court having heard testimony herein for nine days, and having heard argument of counsel, and having delivered an oral opinion herein on May 21, 1943, the Court hereby enters the following Findings of Fact and Conclusions of Law:

Findings of Fact.

The Court finds as facts that:

1. Civil Action No. 4382 was brought as a suit in equity by plaintiff against Precision Instrument Manufacturing Company (called "Precision") and Larson for infringement of three United States Letters Patent, respectively, Larson No. 2,279,752, Zimmerman No. 2,283,888 and Zimmerman Reissue No. 22,219 (formerly No. 2,269,503), all for Torque Wrenches, said infringement being charged to be in violation of a certain contract (Defendants' Exhibit 4) entered into between the parties hereto on December 20, 1940 in settlement of Patent Office Interference (No. 77,565), involving the three applications for the respective patents sued upon, and particularly in violation of Precision's and Larson's covenants in said contract not to infringe upon or contest the validity of said patents.

2. Among other defenses, Precision and Larson pleaded that during the Interference proceedings the party Larson testified falsely with respect to the dates of making a certain drawing (Larson, Interference Exhibit 27,—Defendants' Exhibit 9), and certain models (Defendants' Exhibits 7 and 8), which were material and critical evidence upon the issues of the Interference, that plaintiff and its agents were

aware that the testimony was false, and that plaintiff employed this knowledge, with threats of prosecution for perjury, and promises of suppression of the evidence, to procure the execution of the contract (Defendants' Exhibit 4) in suit, payment to plaintiff of the sum of $500.00, and the transfer to plaintiff of the application for the Larson patent in suit, and that plaintiff did thereafter suppress the evidence of the perjury and withhold making complaint to the proper officers, thereby compounding a crime, rendering said contract null and void, and infecting plaintiff's cause of action with unclean hands requiring its dismissal.

3. Civil Action No. 4382 was consolidated for trial with the suit of Snap-On Tools Corporation *vs.* Automotive Maintenance Machinery Co., Civil Action No. 4451, for declaratory judgment upon the same patents and a somewhat similar contract (Defendants' Exhibit 5), dated December 20, 1940, between those corporations, also executed in settlement of the Interference, in which the same defense was pleaded and also that Automotive Maintenance Machinery Co. (called "Automotive") had made threats 1978 of prosecution against Snap-On Tools Corporation called "Snap-On") and its attorney. Automotive, respondent in Civil Action No. 4451, filed a counterclaim against Snap-On (considered a defendant in the consolidated cause) charging infringement of said three patents mentioned in Paragraph 1 hereof and violation of said Defendants' Exhibit 5 contract.

4. On April 20, 1943 the court entered an order that the patent issues raised by the pleadings in this cause (consolidated) "be set for trial on a separate date from the issues involving the validity of the contracts, Exhibits 4 [5] and 6 [4] now set for May 10, 1943", and these findings of fact and conclusions of law are entered upon the conclusion of that separate trial and are for the most part applicable to both Civil Actions.

5. On November 22, 1937 Zimmerman, an employee of Automotive, filed an application for patent in the United States Patent Office which application was assigned to Automotive and issued on May 19, 1942 as said patent No. 2,283,888. On May 31, 1938, Zimmerman filed an application for patent in the United States Patent Office and assigned the same to Automotive and the same issued on January 13, 1942 as said patent No. 2,269,503, which was reissued as Reissue No. 22,219.

6. On October 1, 1938, Larson, one of the defendants here, filed an application in the United States Patent Office and said application was assigned to Snap-On. The application later issued into said patent No. 2,279,792, dated April 14, 1942, with Automotive as assignee.

1979 7. When the Larson application was filed the claims were confined to a certain so-called "tailpiece" (i. e. means connected to the free extremity of the torque resisting beam) for operating the gauge and such claims did not read on the disclosure of either of the pending Zimmerman applications. The Patent Office suggested to Larson certain claims from the Zimmerman applications, the claims being of sufficiently broad scope to the wrench generally as to read on Larson's disclosure as well as on the respective Zimmerman disclosure. Larson made these claims and on October 11, 1939 the Patent Office declared Interference 77,565 between the Larson application on the one hand and the Zimmerman applications on the other and the subject matter of the Interference involved and the three broader Zimmerman claims which had been suggested to Larson. Then still broader claims were substituted for certain of the claims constituting the counts of the Interference, as declared.

8. Larson being the junior party in the Interference was required by the Patent Office Rules to take his testimony first and that testimony on the issue of priority of invention was taken on his behalf between October 24th and November 4, 1940, inclusive. The depositions of Larson and eight corroborating witnesses were taken on Larson's behalf and sketches, drawings, invoices, patterns and physical torque wrenches, and parts thereof, were offered in evidence as exhibits in support of the oral testimony.

9. In 1937 and 1938, Automotive was manufacturing wrenches embodying the Zimmerman structures and selling the wrenches to Snap-On. In December 1938, Precision was incorporated, the incorporators being said Kenneth R.

1980 Larson, Walter Carlsen and George B. "Thomasa" (his true name being George B. Thomasma). Larson became President, Thomasma Vice-President and Carlsen Secretary and Treasurer. All three comprised the Board of Directors. There was issued to Thomasma 260 shares of the capital stock. Precision became engaged in the manufacture of wrenches embodying the structure shown in the Larson application and sold the wrenches to

Snap-On, Precision having taken away this account of Automotive. Thomasma at the time of incorporation of Precision was a trusted employee of Automotive and he had worked with Zimmerman in developing the Zimmerman wrench involved in the Interference. In June, 1939, Automotive had reasons to believe that the "Thomasa", one of the Precision incorporators, was Thomasma, its own employee, and Automotive's President and Vice-President confronted Thomasma with their suspicions, and when he refused to admit his connection with Precision or explain his unauthorized removal of devices from Automotive's plant, he was discharged.

10. Shortly after the Interference was declared R. E. Fidler, of Davis, Lindsey, Smith & Shonts, Automotive's attorneys, expressed to Automotive, skepticism as to Larson's interventorship of the subject matter of the counts of the Interference as Fidler had been apprised of the matters recited in paragraph 9 hereof. When Fidler procured early in August 1940 a copy of Larson's preliminary statement, setting forth claimed invention dates, Fidler expressed disbelief to Automotive, and explained Larson's claimed dates raised questions of abandoned experiment and lack of diligence.

11. Immediately after Fidler saw Larson's preliminary statement, Automotive through Fidler, engaged an investigator to investigate Precision's Snap-On's, Larson's 1981 and Thomasma's activities in connection with the wrench in question. The investigation was carried on continuously until January 4, 1941 at the cost of about $4700.00. The investigator was one who had been used by Fidler's firm for many years and, in accordance with his practice with that firm, no written reports were rendered by the investigator to Fidler. However, Fidler made some memoranda of his own which were preserved and offered in evidence. The investigators were unable to produce sufficient proof to establish that there was anything substantially wrong with the proofs which Larson had taken in the Interference.

12. On November 3, 1940, Thomasma attempted to sell his Precision stock to plaintiff's President and at that time Thomasma asserted that he had brought the invention which was the subject matter of the Interference to Larson. But he declined to reveal specific facts. Plaintiff's President and Fidler refused to consider purchasing the stock.

13. In November 1940, and for some time prior thereto, Larson and Carlsen were unfriendly with Thomasma and they were trying to rid him from the Precision Company.

14. On November 7th and 8th, within a week after Larson's proofs in the Interference closed, Fidler procured an 84-page statement from Thomasma (called in the trial the Thomasma affidavit); subsequently sworn to on November 15, 1940, in which Thomasma purported to relate in considerable detail the facts with respect to Larson's early work. Thomasma in his affidavit stated that in November 1937, Larson came to his home and they discussed the possibility of making a tension wrench and that at that time Thomasma showed Larson a socket, a piece of drill rod, and a 1982 handle. Larson then made some patterns and several wrenches were made before any drawings of the wrench were made. Thomasma in his affidavit claimed authorship in June, 1938, of the drawing (Larson Interference Exhibit 27—Defendants' Exhibit 9) offered by Larson as the work of a High School boy in 1936 and introduced in the Interference as proof of Larson's early work. Thomasma stated that he made this drawing from one of the previously made tools which was before him. It was drawn to dimension and the dimensions were placed on the drawing but it was not dated at the time. The drawing was simply made so that there would be one to show the wrench and the dimensions. Thomasma also explained in his affidavit that Larson and Carlsen were trying to keep him out of the Precision picture.

15. Thomasma having been a disloyal employee of Automotive and also being disgruntled about the treatment he had received from Larson and Carlsen, and Larson's Interference proofs having consisted of the testimony of nine witnesses, as well as documents and physical exhibits, Fidler had the investigator redouble his efforts to further investigate Larson's proofs and also the statements made by Thomasma in his affidavit. Between the time Thomasma made his statement to Fidler and December 20, 1940, when the contracts involved here were executed, the investigation cost nearly $1700.00.

16. Thomasma submitted to Fidler a drawing which Thomasma had made and Fidler compared it with Defendants' Exhibit 9 drawing (Larson Interference Exhibit 27). On November 22, 1940, Fidler submitted these drawings to a reputable handwriting expert who found some similarities

and discrepancies between the drawings, and declined
1983 to conclude definitely that the two drawings were made by the same person. On November 27, 1940, Fidler submitted another Thomasma drawing to the handwriting expert and the expert found more discrepancies between that drawing and the Larson Interference drawing and was still unable to say that the drawings were made by the same person.

17. George Thomasma, in his affidavit, stated that his brother, John, saw him (George) make the Larson Interference drawing and that John could confirm George's statement that he, George, had made it. Fidler interviewed John Thomasma and the latter stated that he could not verify George's claim that he, George, had made it.

18. Fidler submitted the matter to two lawyers, giving them the essential facts as to the Larson Interference proofs and the Thomasma affidavit, and both of these lawyers advised Fidler that he did not have sufficient proof to accuse anyone of having committed perjury, or sufficient proof to justify taking the matter before the District Attorney.

19. On November 20, 1940, Fidler, as a matter of professional courtesy, had Harry C. Alberts, the attorney for Larson and Snap-On, call on him in his office and at that time Fidler informed Alberts of the contents of the Thomasma affidavit. Alberts asked Fidler to have Thomasma appear before Alberts and Joseph Johnson, President of Snap-On, and Fidler arranged for the meeting which was held in his office on November 28, 1940. Johnson, Alberts, Fidler, the President and Vice-President of Automotive and Thomasma attended the meeting.
Thomasma then told his story which was in substantial
1984 accord with that given in his affidavit. When Thomasma had finished his story Alberts said if he found Thomasma's statement was the truth he would withdraw as attorney for Larson in the Interference and would continue to represent only Snap-On because there might be a conflict of interests between the two.

20. Later in the afternoon of November 28, 1940, Larson and Carlsen were called upon request of Alberts, before Johnson and Alberts, and an explanation demanded in view of Thomasma's story. Alberts advised them that if Thomasma's story were true they would have to procure

other counsel. Larson thereupon admitted his perjury to Johnson and Alberts.

21. Larson, Carlsen and Precision then retained M. K. Hobbs, of the firm of Haight, Goldsteiff and Hobbs, to undertake to settle the interference on their behalf and for no other purpose. A few days thereafter Hobbs and Edward Haight, of the same firm, had a conference with Fidler at which time Hobbs proposed that Automotive give Precision a license to manufacture and sell the wrench, that Larson concede priority to Zimmerman and that there be a proper release for civil damages. Later Hobbs was advised that Automotive wished a higher royalty. On December 9, Fidler took the entire matter up with his partner, Harry W. Lindsey, Jr. On December 12, 1940, Hobbs, Lindsey and Fidler had a conference at which time the matter of settlement was discussed at some length. On December 13, 1940, at a conference attended by Hobbs, Alberts, Fidler and Lindsey, Fidler and Lindsey submitted a draft form of agreement between the three parties. The draft form was discussed and Alberts requested that separate agreements be prepared, one for Snap-On and the other for Precision and Larson. On December 17, 1940, Alberts wrote
1985 Fidler a letter (Defendants' Exhibit 73) proposing an entirely different basis for settlement which was unacceptable to Automotive and its attorneys. In this letter Alberts said, in effect, that Snap-On would make no further concessions and he also pointed out that Snap-On had legal title to the Larson application and Larson could not settle without Snap-On's consent. The next day Automotive's attorneys served on Alberts a notice and demand (Defendants' Exhibit 77) giving notice of taking depositions on behalf of Zimmerman and demanding production of that portion of the transcript of the testimony which the reporter, who took the Larson Interference depositions, had not transcribed. Alberts immediately on the same day served on Hobbs a substitute power of attorney on behalf of Larson in the Interference. Hobbs refused to accept the power of attorney. A week earlier Hobbs had advised Alberts, Lindsey and Fidler that he, Hobbs, would not act as Larson's attorney in the Patent Office because he, Hobbs had been retained only to represent Larson and Precision in connection with settlement. On December 19, 1940, Lindsey wrote Alberts a letter (Defendants' Exhibit 68) reminding him of his obligations to have the Larson testimony

fully transcribed and advised him that Alberts and Johnson must recognize that a large part of the testimony taken on Larsons' behalf was not the whole truth, that they had been advised of developments so far as they had developed, and that they should recognize that they were holding up the issuance of the Zimmerman patent without justification. On the same day Alberts replied by letter (Defendants' Exhibit 76) charging Lindsey with making threats and stating that the only evidence that Johnson and he had of any wrong doing was given at the November 28, 1940 conference,
that Thomasma was not in good repute and that his
1986 uncorroborated word was not deserving of being accepted hook, line and sinker. Alberts also demanded that Automotive's attorneys present evidence of the competent type with sufficient competency to outweigh Larson and his witnesses, before Zimmerman would be entitled to an award of priority in the Interference. On December 20, 1940 Hobbs, Alberts, Lindsey and Fidler had another conference. At this conference Lindsey explained to Alberts that Alberts had read too much into Lindsey's letter of December 19th, and that Lindsey meant to imply no threats. Also at this conference Automotive's attorneys submitted separate agreements to Alberts and Hobbs. The agreements were discussed and modified and the principals virtually agreed to the same in principle.

22. On December 24, 1940 Hobbs, Alberts, Lindsey and Fidler had a short conference at which time the executed contracts, involved here, were exchanged.

23. Concerning the contracts between the various parties to this consolidated cause:

A. By virtue of the Automotive-Precision and Larson contract (Defendants' Exhibit 4), Larson conceded priority to Zimmerman as to common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was also assigned to Automotive and Precision paid $500.00 to Automotive (which money went to Thomasma for the return of his Precision stock to Precision), and in consideration thereof Automotive gave Precision the right to complete unfilled orders on hand from Snap-On to the extent of approximately 6,000 wrenches; released Precision
and Larson and their customers from liability for
1987 infringement by reason of the manufacture and use of previously sold wrenches, and gave Precision and Larson a general release as to all civil damages. Precision

and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications.

B. By virtue of the Automotive-Snap-On contract (Defendants' Exhibit), Snap-On agreed to reassign the Larson application to Precision and acknowledged validity of the claim of the patents to issue on the Zimmerman and Larson applications, and Automotive gave to Snap-On the right to sell said approximately 6,000 wrenches then on order, released Snap-On and its customers from all liability for infringement by reason of the sale of previously sold wrenches, and gave to Snap-On a general release as to all civil damages.

C. The general releases as to all civil damages were considered important by all of the attorneys for all the parties. Hobbs and Alberts were fearful that Automotive might sue Precision, Larson and Snap-On because Thomaspa, while a trusted employee of Automotive, suggested to Larson that a wrench be designed and helped Larson and Carlson organize Precision, with the result that Snap-On's business with Automotive was taken over by Precision.

D. By virtue of an agreement (Plaintiff's Exhibit 3) between Snap-On, on the one hand, and Larson and Precision on the other, which agreement is dated December 20, 1940, Snap-On reassigned to Larson and Precision whatever title Snap-On had to the Larson application, Precision agreed to manufacture and deliver to Snap-On said approximately 6,000 wrenches then on order, Snap-On 1988 advanced to Precision $500.00, which was paid to Automotive, Snap-On assented to the Automotive-Precision and Larson agreement, Exhibit 4, and Snap-On agreed to the cancellation of an agreement between it and Precision dated September 28, 1938 (Defendants' Exhibit 61), by virtue of which Snap-On had obtained some title to the Larson application. There is no evidence that Automotive and its attorneys knew of said December 20, 1940, Snap-On-Precision agreement until about April 14, 1943.

24. At the meeting on December 24, 1940, it was agreed that the notebooks in which the reporter had taken down the Larson Interference testimony stenographically, and the original copies of the Interference depositions should be turned over to Mr. Alberts for preservation, Hobbs having his reasons for having them preserved and Lindsey and Fidler having their reasons. Pursuant to that agreement, on December 26, 1940, Fidler wrote the reporter advising

the reporter that it "was agreed" that the reporter would deliver to Alberts his notebooks and the original copies of the depositions.

25. After the Larson application was assigned to Automotive the Interference counts were cancelled from the Larson application and the Larson patent issued only with claims which are directed to specific structure disclosed in the Larson application, and which are not readable on the disclosures of the Zimmerman applications and the Zimmerman patents which issued thereon.

1989 26. Defendants pleaded that Larson had committed perjury in the Interference. That perjury was proven and was conceded by Automotive at the trial. Larson's evidence in that Interference sought to establish a date of conception and reduction to practice in 1934, three years before he had done any work on the subject matter of the Interference, and almost three years before the earliest date claimed by Automotive through its inventor Zimmerman. It was proven at the trial that the Larson Interference drawing (Defendants' Exhibit 9) of the Precision wrench was made by Thomasma in the middle of 1938 and not in 1936 by a high school boy as Larson had testified to in the Interference. The drawing was made (and undated) for production purposes and not to support any dates of invention. It was after the Interference was declared in 1939 that Larson signed and placed a 1936 date on the drawing and had several others, including two of his later Interference witnesses, likewise sign the drawing.

27. The oral testimony in this consolidated case shows that if Larson's proofs in the Interference had been true and had there been no questions as to abandoned experiment or lack of diligence in filing his application, he would have been entitled to an award of priority in the Interference.

28. The Thomasma affidavit was enough evidence of perjury for any lawyer who was so inclined to bring it to the prosecuting officers of this district. Even if it were not, as soon as Larson had affixed his signature to the agreement of December 20, 1940, he admitted thereby that he had committed perjury. In no other way, until Larson's perjury was pleaded in the Snap-On action, was Auto-
1990 motive or its agents or attorneys informed or advised by Larson, Carlsen, Alberts, Johnson, or anyone else that Larson had committed or admitted perjury.

29. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officers of this district of perjury in the proceedings, until the perjury was pleaded in the Snap-On action.

30. Defendants contended that because of Larson's perjury the contracts should be declared null and void and the Larson patent should be declared inoperative, null and void. That patent is based on perjury. It has been connected with that patent ever since the application was filed. That patent is a fraud and a fraud was perpetrated on the Commissioner of Patents.

31. Plaintiff's conduct in not taking steps to inform the proper officials of perjury in the Interference proceedings, and in bringing suit on the patents issuing on the applications involved in that Interference and on the contracts procured in settlement thereof, has so infected this cause of action with unclean hands, that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf.

32. Petitioner (Snap-On) in Civil Action 4451 claiming under and by virtue of Larson must be denied relief on the same ground.

33. Automotive and its agents and attorneys were not aware that Larson had committeed perjury until December 20, 1940, when Larson executed the Exhibit 4, agreement.

1991 34. Automotive and its attorneys did not at any time charge Larson or any of his witnesses with the crime of perjury.

35. Automotive and its agents did not threaten Larson or any of his witnesses, Precision, Snap-On or Alberts with the institution of prosecution for perjury.

36. Automotive and its attorneys did not promise Larson, Precision, Snap-On, Johnson or Alberts, or anyone else, that they would withhold any complaint or perjury from the proper authorities.

37. Automotive and its attorneys did not agree to suppress any of the evidence in consideration of defendants entering into the contracts.

38. Automotive and its agents did not threaten Larson, any of his witnesses, Precision, Snap-On or Alberts that the proper authorities would be informed with respect to the perjury unless the Larson application and the sum of $500.00 were transferred to Automotive.

39. Automotive, as a result of the settlement contracts, did not receive the Larson application, the $500.00 and the other promises set forth in the contracts, under threat of not informing or in consideration for not informing or not prosecuting or suppressing evidence with respect to the perjury.

40. Aside from Automotive's and its attorneys' failure to inform the proper authorities of this District of the situation involving Larson's perjury, Automotive and its attorneys did not in any way suppress the evidence of perjury nor did they take any positive steps or do any affirmative act to conceal a crime of perjury. Automotive
1992 and its attorneys carefully preserved and voluntarily produced for the inspection of defendants' attorneys in connection with the trial, all of the evidence which had been accumulated in connection with the Interference, including copies of the Interference depositions in so far as they were transcribed, all correspondence, memoranda, investigators' invoices, etc., Mr. Hobbs and Mr. Alberts preserved all of their files. The only thing missing are two of the notebooks of the reporter who reported the Larson Interference testimony and Automotive and its attorneys are in no way responsible for the disappearance of those books.

41. Neither Automotive nor its attorneys in any way coerced Snap-On, Larson or Precision into entering into the contracts by threats of prosecution, or otherwise.

42. Neither Automotive nor its attorneys threatened Snap-On and its attorney with the crime of possessing or concealing knowledge of perjury and with action for civil and criminal conspiracy.

Conclusions of Law.

I. This court has jurisdiction of the parties hereto and of the subject matter of Civil Actions Nos. 4382 and 4451.

II. Plaintiff comes into this court with unclean hands in Civil Action No. 4382.

III. The Amended and Supplemental Complaints in Civil Action No. 4382 are ordered dismissed.

IV. Petitioner comes into this court with unclean hands in Civil Action No. 4451.

1993 V. The Petition and Amended Petitions in Civil Action No. 4451 are ordered dismissed.

VI. The first Counterclaim by respondent (plaintiff here) in Civil Action No. 4382 is ordered dismissed.

VII. There will be no award of costs.

VIII. Neither Automotive nor its officers, agents or attorneys are guilty of any crime or compounding any crime.

Remarks.

Findings 28, 30, 31 and 33 and the first clause of Finding 40, and Conclusions II, III, VI and VII are only proposed by Automotive's attorneys in order to accord with the court's oral opinion, and are excepted to.

With respect to proposed Finding 30 (which mostly follows the language of the court in its oral opinion) Automotive's counsel respectfully point out the following: Neither in the pleadings nor at the trial did defendants urge that because of Larson's perjury the Larson patent in suit was inoperative, null and void. The record shows that perjury was not connected with the Larson application when filed, and that the patent as issued was not based on perjury. We submit that an accurate and appropriate finding in this regard would be as follows:

"When Larson filed his application his claims were specifically limited to the so-called 'tailpiece' which was an improvement invented (if any invention existed) by Larson. No perjury in connection with the application arose until August 1939 when Larson filed in the Patent Office an affidavit under Rule 93 as to his date of conception. The Interference was then declared and Larson filed a false preliminary statement and testified falsely in the Interference. Larson's perjured preliminary statement and perjured testimony pertained only to the broad counts of the Interference which counts came from the Zimmerman applications and were suggested by the Patent Office to Larson."

1994 The claims of the Larson patent are restricted to detailed structure invented by Larson and not disclosed in the Zimmerman applications nor asserted to have been invented by Zimmerman."

Respectfully submitted,

Davis, Lindsey, Smith & Shonts,
Harry W. Lindsey, Jr.,
Raymond E. Fidler,
Albert J. Smith, H. W. L., Jr.,
Attorneys for Automotive.

1995 And afterwards on, to wit, the 28th day of June, 1943, came the Defendants by their attorneys and submitted their certain Proposed Findings Of Fact And Conclusions Of Law in words and figures following, to wit:

1996 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382 & 4451)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause, Consolidation of Civil Actions No. 4382 and No. 4451, having come on to be heard for the entry of Findings of Fact and Conclusions of Law, and the Court having heard testimony herein for nine days, and having heard argument of counsel, and having delivered an oral opinion herein on May 21, 1943, the Court hereby enters the following Findings of Fact and Conclusions of Law:

Findings of Fact.

The Court finds as facts that:

1. Civil Action No. 4382 was brought as a suit in equity by plaintiff for infringement of three United States Letters Patent, respectively, Larson No. 2,279,792; Zimmerman No. 2,283,888, and Zimmerman Reissue No. 2,219 (formerly No. 2,269,503), all for Torque Wrenches, and to enforce a certain contract entered into between the parties hereto
1997 on December 20, 1940, in settlement of Patent Office Interference (No. 77,565) involving the three applications for the respective patents sued upon.

2. Among other defenses, defendants pleaded that during the Interference proceedings, the party Larson testified falsely with respect to the dates of making a certain drawing (Larson, Interference Exhibit 7,—Defendants' Exhibit 9), and certain models (Defendants' Exhibits 7, 8), which were material and critical evidence upon the issues of the Interference, that plaintiff and its agents were aware that the testimony was false, and that plaintiff employed this knowledge, with threats of prosecution for perjury, and promises of suppression of the evidence, to procure the execution of the contracts in suit, payment to plaintiff of the sum of $500.00, and the transfer to plaintiff of the application for the Larson patent in suit, and plaintiff did

suppress the evidence of the perjury and withhold making complaint to the proper officers, thereby compounding a crime, rendering the contracts in suit null and void, and infecting plaintiff's cause of action with unclean hands requiring its dismissal.

3. Civil Action No. 4382 was consolidated for trial with the suit of *Snap-On Tools Corporation* v. *Automotive Maintenance Machinery Co.*, Civil Action No. 4451, for declaratory judgment upon the same patents and a corresponding contract dated December 20, 1940, between those corporations, also executed in settlement of the Interference, in which the same defense was pleaded. Automotive, respondent in Civil Action No. 4451, filed a counterclaim against Snap-On (considered a defend-
1998 ant in the consolidated cause) charging infringement of said three patents mentioned in Paragraph 1 hereof, and also charging infringement of Patent No. 1,936,612. The defense of unclean hands was ordered tried separately from the patent issues made by the pleadings, in both Civil Action No. 4382 and Civil Action No. 4451, and these Findings of Fact and Conclusions of Law are entered upon the conclusion of that separate trial and are applicable to both of said causes.

4. Testimony has been heard in open court for nine days. All of the attorneys who concluded the agreement of December 20, 1940 in suit, the presidents of the three corporations involved, and many other witnesses have been heard. The testimony is in many respects in direct conflict, both with testimony of other witnesses, pre-trial testimony, and the many documents in evidence.

5. That there was perjury in the Interference upon a material issue is pleaded, proven and conceded. Larson's evidence in that proceeding sought to establish a date of conception and reduction to practice in 1934, three years before he had done any work on the subject matter of the Interference, and almost three years before the earliest date claimed by Automotive through its inventor Zimmerman.

6. Exposure of Larson's claimed dates in his Preliminary Statement led to expressions of disbelief by plaintiff's Attorney, an extensive investigation by private detectives, and the disclosure that one of the organizers,
1999 stockholders and officers of Precision Instrument Manufacturing Company (one George B. Thomasma)

was a former employee of plaintiff and close associate of Zimmerman. Before Larson's testimony in the Interference was concluded, Thomasma sought out plaintiff's president and revealed that he had brought the invention which was the subject matter of the Interference to Larson.

7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the facts with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave no doubt of the author's knowledge of the facts. In that statement, Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a highschool boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff, as proof of his claim.

8. Within a week after the execution of the Thomasma affidavit, plaintiff's attorney informed Larson's patent attorney of the information disclosed in the Thomasma affidavit and a week later Thomasma was examined orally in the office of plaintiff's attorney before the president and attorney of Snap-On Tools Corporation (Petitioner in Civil Action No. 4451, and sole outlet for Precision Instrument Manufacturing Company). Thereupon Larson 2000 was called before Snap-On's president and patent attorney (who had conducted the Interference proceedings on behalf of Larson) and explanation demanded. Larson admitted his perjury and was told to procure other counsel. Up to the time that Larson was confronted with and admitted perjury to his patent attorney, no one else up to that time was involved with that perjury.

9. Larson procured other counsel who immediately undertook efforts at settlement on his behalf. A number of meetings were held between the attorney for Snap-On, the attorney for Larson and Precision Instrument Manufacturing Company, and attorneys for plaintiff, a draft agreement was considered, the negotiations broken off, Larson's new counsel withdrew, but subsequently participated in the negotiations which were resumed and concluded on December 20, 1940, when the two agreements of December 20, 1940, sued upon, were executed, plaintiff was

paid $500.00, Zimmerman's priority conceded by Larson, and the Larson application assigned to plaintiff.

10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman, and that there was no occasion for Larson's concession of priority to Zimmerman and the agreements of December 20, 1940, unless Larson admitted the falsity of his proofs.

2001 11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson's Interference proofs were perjured.

12. On December 26, 1940, plaintiff's attorney wrote the reporter who had reported the Larson Interference testimony, to deliver the remainder of the transcribed record and the notebooks (containing also some untranscribed notes) to Larson's attorney, who had engaged the reporter.

13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.

14. Plaintiff procured the Larson patent in suit by continuing the prosecution of the Larson application assigned to plaintiff in settlement of the Interference on December 20, 1940.

15. Plaintiff procured the contracts which it seeks to enforce in these cases (the two cases now consolidated) in settlement of the Interference on December 20, 1940.

16. Plaintiff's conduct in remaining silent as to Larson's perjury after discovery thereof, and in seeking to exploit the contracts and patent applications procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands
2002 that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf.

17. Petitioner (Snap-On) in Civil Action No. 4451, claiming under and by virtue of Larson, must be denied relief on the same grounds.

Conclusions of Law.

I. This court has jurisdiction of the parties hereto and of the subject matter of Civil Actions Nos. 4382 and 4451.

II. Plaintiff comes into this court with unclean hands in Civil Action No. 4382.

III. The Complaint and Amended and Supplemental Complaint in Civil Action No. 4382 are ordered dismissed.

IV. Petitioner comes into this Court with unclean hands in Civil Action No. 4451.

V. The Petition and Amended Petitions in Civil Cause No. 4451 are ordered dismissed.

VI. The Counterclaim by respondent (plaintiff here) in Civil Action No. 4451 is ordered dismissed.

VII. There will be no award of costs.

United States District Judge.

June , 1943.

2003 And afterwards, to wit, on the 12th day of July, 1943, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

2004 In the United States District Court.

(Caption 4382 and 4451)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause, Consolidated of Civil Actions No. 4382 and 4451, having come on to be heard for the entry of Findings of Fact and Conclusions of Law, and the Court having heard testimony herein for nine days, and having heard arguiment of counsel, the Court hereby enters the following Findings of Fact and Conclusions of Law:

Findings of Fact.

The Court finds as facts that:

1. Civil Action No. 4382 was brought as a suit in equity by plaintiff for infringement of three United States Letters Patent, respectively, Larson No. 2,279,792, Zimmerman No.

2,269,503 and Zimmerman Reissue No. 22,219 (formerly No. 2,283,888), all for Torque Wrenches, and to enforce a certain contract entered into between the parties hereto on December 20, 1940, in settlement of Patent Office Interference (No. 77,565) involving the three applications for the respective patents sued upon.

2005 2. Among other defenses, defendants pleaded that during the Interference proceedings the party Larson testified falsely with respect to the dates of making a certain drawing (Larson, Interference Exhibit 27,—Defendants' Exhibit 9), and certain models (Defendants' Exhibits 7, 8) which were material and critical evidence upon the issues of the Interference, that plaintiff and its agents were aware that the testimony was false, and that plaintiff employed this knowledge, with threats of prosecution for perjury, and promises of suppression of the evidence, to procure the execution of the contracts in suit, payment to plaintiff of the sum of $500.00, and the transfer to plaintiff of the application for the Larson patent in suit, and plaintiff did thereafter suppress the evidence of the perjury and withhold making complaint to the proper officers, thereby compounding a crime, rendering the contracts in suit null and void, and infecting plaintiff's cause of action with unclean hands requiring its dismissal.

3. Civil Action No. 4382 was consolidated for trial with the suit of Snap-On Tools Corporation *vs.* Automotive Maintenance Machinery Co., Civil Action No. 4451, for declaratory judgment upon the same patents and a corresponding contract dated December 20, 1940, between those corporations, also executed in settlement of the Interference, in which the same defense was pleaded. Automotive, respondent in Civil Action No. 4451, filed a counterclaim against Snap-On (considered a defendant in the consolidated cause) charging infringement of said three patents mentioned in Paragraph I hereof, and also charging infringement of Patent No. 1,936,912. The defense of unclean hands was ordered tried separately from the 2006 patent issues made by the pleadings, in both Civil Action No. 4382 and Civil Action No. 4451, and these Findings of Fact and Conclusions of Law are entered upon the conclusion of that separate trial and are applicable to both of said causes.

4. Testimony has been heard in open court for nine days. All of the attorneys who concluded the agreements

of December 20, 1940 in suit, the presidents of the three corporations involved, and many other witnesses have been heard. The testimony is in many respects in direct conflict, both with testimony of other witnesses, pre-trial testimony, and the many documents in evidence.

5. That there was perjury in the Interference upon a material issue is pleaded, proven and conceded. Larson's evidence in that proceeding sought to establish a date of conception and reduction to practice in 1934, three years before he had done any work on the subject matter of the Interference, and almost three years before the earliest date claimed by Automotive through its inventor, Zimmerman.

6. Exposure of Larson's claimed dates in his Preliminary Statement led to expressions of disbelief by plaintiff's Attorney, an extensive investigation by private detectives, and the disclosure that one of the organizers, stockholders and officers of Precision Instrument Manufacturing Company (one George B. Thomasma) was a former employee of plaintiff and close associate of Zimmerman. Before Larson's testimony in the interference was concluded, Thomasma sought out plaintiff's president and revealed that he had brought the invention which was the subject matter of the interference to Larson.

2007 7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt of the author's knowledge of the facts. In that statement, Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a high-school boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff, as proof of his claim.

8. Within a week after the execution of the Thomasma affidavit, plaintiff's attorney informed Larson's patent attorney of the information disclosed in the Thomasma affidavit and a week later Thomasma was examined orally in the office of plaintiff's attorneys before the president and attorney of Snap-On Tools Corporation (Petitioner in

Civil Action No. 4451, and sole outlet for Precision Instrument Manufacturing Company). Thereupon Larson was called before Snap-On's president and patent attorney (who had conducted the Interference proceedings on behalf of Larson) and explanation demanded. Larson admitted his perjury and was told to procure other counsel. Up to the time that Larson was confronted with and admitted perjury to his patent attorney, no one else up to that time was involved with that perjury.

9. Larson procured other counsel who immediately undertook efforts at settlement on his behalf. A 2008 number of meetings were held between the attorney for Snap-On, the attorney for Larson and Precision Instrument Manufacturing Company, and attorneys for plaintiff, a draft agreement was considered; the negotiations were once broken off, but were subsequently resumed and concluded on December 20, 1940 when the two agreements of that date, sued upon, were executed. By the terms of the Automotive-Precision-Larson contract (Defendants' Exhibit 4) Larson conceded priority to Zimmerman as to the common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was assigned to Automotive. Precision paid $500 to Automotive. Automotive licensed Precision and Larson to complete unfilled orders from Snap-On to the extent of approximately 6000 wrenches, any wrenches in excess of that number to bear a royalty of 10%. Automotive released Precision and Larson and their customers from liability for infringement by reason of the manufacture and use of previously sold wrenches and gave Precision and Larson a complete and general release as to all civil damages. Precision and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. The manufacture of wrenches for the unfilled orders was not completed until October 1941.

10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman.

11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his Interference proofs were insufficient.

2009 12. On December 26, 1940, plaintiff's attorney wrote the reporter who had reported the Larson Interference testimony, to deliver the remainder of the transcribed record and the notebooks (containing also some untranscribed notes) to Larson's attorney, who had engaged the reporter.

13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.

14. Plaintiff procured the Larson patent in suit (but not with the interference claims therein) by continuing the prosecution of the Larson application assigned to plaintiff in settlement of the Interference on December 20, 1940.

15. Plaintiff procured the contracts which it now seeks to enforce in these cases (the two cases now consolidated) in settlement of the Interference on December 20, 1940.

16. Plaintiff's conduct in remaining silent after securing the Thomasma affidavit and in seeking to exploit the contracts and patent application procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf.

17. Petitioner (Snap-On) in Civil Action No. 4451, claiming under and by virtue of Larson, must be denied relief on the same grounds.

2010 Conclusions of Law.

I. This court has jurisdiction of the parties hereto and of the subject matter of Civil Actions Nos. 4382 and 4451.

II. Plaintiff comes into this court with unclean hands in Civil Action No. 4382.

III. The Amended and Supplemental Complaints in Civil Action No. 4382 are ordered dismissed.

IV. Petitioner comes into this Court with unclean hands in Civil Action No. 4451.

V. The Petition and Amended Petitions in Civil Action No. 4451 are ordered dismissed.

VI. The Counterclaims by respondent (plaintiff here) in Civil Action No. 4451 are ordered dismissed.

VII. There will be no award of costs.

Igoe,
United States District Judge.

July 12th, 1943.

2011 And on, to wit, the 12th day of July, 1943, there was filed in the Clerk's office of said Court a certain Memorandum of the Hon. Michael L. Igoe, District Judge, in words and figures following, to wit:

2012 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382 and 4451)

MEMORANDUM.

In this case, the court rendered an oral opinion at the closing of the arguments. At the request of M. K. Hobbs, an attorney who testified in the case, the court has re-examined the record.

It was not the intention of the court that the statements in the opinion should be construed as implying that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct. Accordingly, the oral opinion is withdrawn and is not to be filed as a part of the record. The Court has entered written findings and conclusions. It appears from an examination of the record that the witness Hobbs did not testify falsely; that he has adhered to the rules which govern the relations existing between attorney and client and that he was not guilty of any professional misconduct or criminal act.

Igoe,
United States District Judge.

2013 And afterwards, to wit, on the 12th day of July, 1943, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

2014 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382 & 4451)

JUDGMENT.

This consolidated cause having come on to be heard for entry of judgment upon the Findings of Fact and Conclusions of Law heretofore entered herein—

It Is Ordered,—That

1. The Complaint and Amended and Supplemental Complaint in Civil Action No. 4382 are dismissed for want of equity.

2. The Petition and Amendment Petitions in Civil Action No. 4451 are dismissed for want of equity.

3. The Counterclaims in Civil Action No. 4451 are dismissed for want of equity.

4. There shall be no award of costs.

Igoe,
United States District Judge.

July 12th, 1943.

2015 And afterwards, on, to wit, the 22nd day of July, 1943 came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal to the Circuit Court of Appeals, in words and figures following, to wit:

2016 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois

Eastern Division.

Automotive Maintenance Machinery Co., *Plaintiff,* vs. Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation, *Defendants.*	Civil Action No. 4382, (Consolidated with Civil Action No. 4451)

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS.

Notice is hereby given that Automotive Maintenance Machinery Company, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Seventh Judicial Circuit from the Judgment entered on July 12, 1943, in this consolidated action, and particularly with respect to paragraphs 1 and 3, dismissing for want of equity the Complaint and Amended and Supplemental Complaint in Civil Action No. 4382 and the "Counterclaims" in Civil Action No. 4451 and with respect to paragraph 4 in failing to award costs to plaintiff, no appeal being taken by plaintiff from paragraph 2 of the Judgment dismissing for want of equity the Petition and Amended Petitions in Civil Action No. 4451.

Davis, Lindsey, Smith and Shounts,
Attorneys for Plaintiff.

Harry W. Lindsey, Jr.,
Raymond E. Fidler,
Of Counsel.

2017 And afterwards, on, to wit, the 6th day of August, 1943, came the Plaintiff-Appellant by, its attorneys and filed in the Clerk's office of said Court its certain Statement of Points in words and figures following, to wit:

2018 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382 & 4451)

PLAINTIFF'S STATEMENT OF POINTS.

1. Error in dismissing the Complaint and Amended and Supplemental Complaint in Civil Action No. 4382, and the "Counterclaims" in Civil Action No. 4451.

2. Error in decreeing that there shall be no award of costs in favor of plaintiff.

3. Error in not entering a judgment decreeing that plaintiff has not been guilty of unclean hands with respects to each of the patents and contracts in suit, that the Automotive Precision-Larson agreement (Defendants' Exh. 4) and the Automotive-Snap-On agreement (Defendants' Exh. 5) are good and valid in law and equity and enforceable against the respective defendants, that plaintiff recover its costs from the defendants and that the allegations in defendants' pleadings attacking validity of each of the patents in suit be stricken.

4. Error in entering each of the Court's "Findings of Fact", except Findings Nos. 5, 9, 14 and 17 and in entering each of the Court's "Conclusions of Law" except Conclusions Nos. I and IV.

2019 5. Error in not entering "Plaintiff's Proposed Findings of Fact and Conclusions of Law", except proposed Findings 28, 30, 31 and 33, the first clause of proposed Finding 40 and proposed Conclusions II, III, VI and VII.

6. Error in finding (Finding No. 1) that plaintiff in Civil Action No. 4382 brought suit "to enforce a certain contract" and in not finding that plaintiff charged the patent infringement complained of to be in violation of said contract.

7. Error in finding (Finding No. 3) that in Civil Action No. 4451 suit was brought by plaintiff upon "a corresponding contract".

8. Error in finding (Finding No. 3) that the "defense of unclean hands as ordered tried separately from the patent issues" and in not finding that on April 20, 1943 the Court entered an order that the patent issues raised

by the pleadings in this consolidated cause "be set for trial on a separate date from the issues involving the validity of the contracts, Exhibits 4 [5] and 6 [4] now set for May 10, 1943".

9. Error in finding (Findings Nos. 4 and 10) that the testimony is in many respects in direct conflict, both with testimony of other witnesses, pre-trial testimony and the many documents in evidence, and that the oral testimony in this consolidated cause is in irreconcilable conflict.

10. Error in finding (Finding No. 6) that the disclosure of Larson's claimed dates in his Preliminary Statement led to the disclosure that George B. Thomasma was a former employee of plaintiff, and in not finding that in June, 1939, prior to the declaration of interference, plaintiff had reasons to believe that said Thomasma was one of the Precision incorporators and officers and thereupon discharged Thomasma.

11. Error in finding (Finding No. 7) that before Larson's testimony in the interference was concluded, Thomasma "revealed" that he had brought the subject matter of the Interference to Larson.

12. Error in finding (Finding No. 7) that the Thomasma affidavit "related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt as to the author's knowledge of the facts", and that Thomasma produced other "drawings" as proof of his claim that he was the author of the drawing offered by Larson as the work of a high-school boy.

13. Error in not finding that Thomasma had been a disloyal employee of Automotive and was disgruntled about the treatment he had received from Larson and Carlson; that Larson's Interference proofs consisted of the testimony of nine witnesses, as well as documents and physical exhibits; that after Thomasma made his affidavit plaintiff's attorneys had the investigator redouble his efforts to further investigate Larson's proofs and also the statements made by Thomasma in his affidavit, the further expense of investigation being over $2000.00; that Thomasma submitted to plaintiff's attorney, but one drawing for comparison with the Larson Interference drawing; that Automotive's attorneys submitted these drawings

and another drawing of Thomasma to a reputable
2021 handwriting expert who declined to conclude definitely that the three drawings were made by the same person; that Thomasma, in his affidavit, stated that his brother, John, saw him make the Larson Interference drawing and the brother could not verify Thomasma's claim that he had made it; and that plaintiff's attorney submitted the essential facts as to the Larson proofs in the Interference to two reputable lawyers both of whom advised there was not sufficient proof to accuse anyone of having committed perjury, or sufficient proof to justify taking the matter before the District Attorney.

14. Error in finding (Finding No. 8) that "Up to the time that Larson was confronted with and admitted perjury to his patent attorney, no one else up to that time was involved with that perjury", and in not finding that Carlsen, and probably others, had also committed perjury in the Interference.

15. The Court erred (Finding No. 10) in finding that the oral testimony in this consolidated case discloses that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman, without finding further that the record also raised questions of abandoned experiment and lack of diligence on the part of Larson.

16. Error in finding (Finding No. 11) that the "proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his interference proofs were insufficient"—

if the Court had reference to perjury—and in not
2022 finding that plaintiff and its attorneys were not aware that any of the Interference witnesses had committed perjury until Larson admitted his perjury in open court in this consolidated cause.

17. With respect to Finding No. 12, the Court erred in not further finding that the attorneys for plaintiff, Larson, Precision and Snap-On had agreed that the transcribed notes and notebooks of the reporter, who reported the Larson Interference testimony, should be turned over to Larson's attorney for the purpose of preservation, and in not finding that certain portions of the notebooks (containing untranscribed notes) had been destroyed by Lar-

son's attorney and that plaintiff's attorney had nothing to do with such destruction.

18. The Court erred in entering Finding No. 13 in so far as that Finding infers that plaintiff and its attorneys were aware of the perjury in the Interference before the defense of unclean hands was pleaded in the two cases now consolidated.

19. The Court erred in entering Finding No. 15 in so far as it finds that plaintiff in Civil Action No. 4382 seeks to enforce either of the contracts, as plaintiff asked for no affirmative relief with respect to either of said contracts in said action.

20. Error in finding (Finding No. 16) that plaintiff's conduct in remaining silent after securing Thomasma's affidavit and seeking to exploit the contracts and patent application procured in settlement of the Interference,

has so infected its cause of action with unclean hands 2023 that a Court of equity cannot entertain the suit or any prayer for relief in plaintiff's behalf, and in not finding that plaintiff did not remain silent after securing the Thomasma affidavit, that that affidavit was insufficient, in view of the situation then existing, to present it to a District Attorney, that plaintiff was fully justified and warranted in equity and in law in prosecuting the Larson application to a patent and in bringing action against the defendants under the Larson patent and the contracts and that plaintiff is not guilty of unclean hands.

21. Error in not finding that plaintiff and its attorneys were not aware that Larson nor any of his witnesses had committed perjury in the Interference until Larson admitted his perjury in open court, that they did not at any time charge Larson or any of his witnesses with the crime of perjury, that they did not threaten Larson or any of his witnesses, Precision, Snap-On or Alberts with the institution of prosecution for perjury, that they did not promise any of the same that they would withhold any complaint of perjury from the proper authorities, that they did not agree to suppress any of the evidence in consideration of defendants entering into the contracts in issue, that they did not threaten Larson, Precision, Snap-On or Alberts that the proper authorities would be informed with respect to the perjury unless the Larson application and sum of $500.00 were transferred to plaintiff,

that plaintiff as a result of his settlement contracts did not receive the Larson application, the $500.00 and other promises set forth in the contracts, under threat of not informing or in consideration for not informing or not prosecuting or suppressing evidence with respect to
2024 the perjury, that plaintiff and its attorneys did not in any way suppress the evidence of perjury nor take any positive steps or take any affirmative action to conceal the crime of perjury, that they did not in any way coerce any of the defendants into entering into the contracts by threats of prosecution or otherwise, and that they did not threaten Snap-On or its attorney with the crime of concealing knowledge of perjury and with action for civil or criminal conspiracy.

22. Error in not finding that when Larson filed his application his claims were specifically limited to the so-called "tailpiece", which was an improvement invented (if any invention existed) by Larson, that no perjury in connection with the application arose until August 1939 when Larson filed in the Patent Office an affidavit under Rule 93 as to his date of conception, that the Interference was then declared and Larson filed a false preliminary statement and testified falsely in the Interference, and that Larson's perjured preliminary statement and perjured testimony pertained only to the broad counts of the Interference, which counts came from the Zimmerman applications and were suggested by the Patent Office to Larson, that after the application was assigned to Automotive its attorneys cancelled the broad claims constituting the counts of the Interference and that the Larson patent, which issued on said application, only contains limited claims directed to specific structure invented by Larson and not readable on the disclosures of the Zimmerman applications involved in the Interferences.

23. Error in concluding as a matter of law that plaintiff was in court with unclean hands.

2025 24. Error in concluding as a matter of law that the charges of infringement as to each respective patent in suit should be dismissed on the ground of unclean hands, and in not concluding as a matter of law, that the unclean hands found by the Court did not warrant the dismissal of the charges of patent infringement set up in the Amended and Supplemental Complaints in Civil Action

No. 4382 and in Plaintiff's First Counterclaim in Action No. 4451.

25. Error in not concluding as a matter of law that plaintiff was in court with clean hands, that plaintiff and its attorneys were not guilty of any crime or of compounding any crime, as alleged in defendants' pleadings, and that the contracts were good, valid and enforceable.

Automotive Maintenance Machinery Co.,
By Frank Parker Davis,
Harry W. Lindsey, Jr.,
Raymond E. Fidler,
Its Attorneys.

2026 And afterwards, on, to wit, the 22nd day of July, 1943, came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain BOND ON APPEAL, in words and figures following, to wit:

2027 Know all Men by these Presents:

That we, Automotive Maintenance Machinery Co., as principal, and The Fidelity and Casualty Company of New York, as surety, are held and firmly bound unto Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation in the full and just sum of Two Hundred Fifty and No 100 ($250.00) to be paid to the said Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty-first day of July in the year of our Lord one thousand nine hundred and forty-three.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court, between Automotive Maintenance Machinery Co. vs. Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation a judgment was rendered against Automotive Maintenance Machinery Co. and the said Automotive Maintenance Machinery Co. having filed in the Clerk's Office of the said District Court Notice of Appeal to the

United States Circuit Court of Appeals for the Seventh Circuit, to reverse the judgment of the aforesaid suit, in the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within forty (40) days from the date hereof.

Now, the condition of the above obligation is such, that if the said Automotive Maintenance Machinery Co. shall pay the costs if the appeal is dismissed or the judgment affirmed, or pay such costs as the appellate court may award if the judgment is modified then the above obligation to be void; otherwise to remain in full force and virtue.

Automotive Maintenance Machinery Co.,
By: Davis, Lindsey, Smith & Shonts (Seal)
The Fidelity and Casualty Company of New York (Seal)
By: Arthur F. Evans,
Arthur F. Evans,
(Corp. Seal) *Attorney.*

Sealed and delivered in presence of:

Approved by:

(Jurat Attached Not Copied.)

Endorsed: United States District Court. * * (Caption—4382) * * Bond on Appeal. Filed 5.00 Jul 22 1943 At 12:20 o'clock pm. Roy H. Johnson Clerk AEC.

2029 And afterwards, to wit, on the 9th day of August, 1943, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

2030 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

ORDER.

Upon consent of Counsel for the respective parties,

It Is Hereby Ordered that the Clerk of this Court transmit to the Clerk of the Circuit Court of Appeals all of the original documentary and physical Court exhibits listed in Items 34, 35, 36 and 37 of Plaintiff-Appellant's Designation of Contents of Record on Appeal in lieu of copies thereof.

Igoe,
United States District Judge.

August 9, 1943.

Entry of the above Order is hereby consented to:

Davis, Lindsey, Smith & Shonts,
Attorneys for Plaintiff, Automotive Maintenance Machinery Co.

Caspér W. Ooms,
Attorney for Defendants, Precision Instrument Manufacturing Company and Kenneth R. Larson.

Will Freeman,
Attorney for Defendant, Snap-On Tools Corporation.

2031 And on, to wit, the 6th day of August, 1943, came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Designation of Contents of Record on Appeal in words and figures following, to wit:

2032 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382, 4451)

PLAINTIFF-APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

To the Clerk of the Above District Court:

You are hereby requested, pursuant to the provisions of Rule 75(a) and the other sections of the Federal Rules of Civil Procedure governing appeals, to prepare a transcript of record on appeal and incorporate therein the following items:

1. Amended and Supplemental Complaint filed November 30, 1940, in Civil Action No. 4382 (original Complaint filed June 15, 1942).

2. Amended Answer of Defendants to Amended and Supplemental Complaint filed February 8, 1943, in Civil Action No. 4382.

3. Third Amended Petition for Declaratory Decree, filed March 1, 1943, in Civil Action No. 4451 (original Petition filed July 6, 1942).

2033 Respondent's Answer to Third Amended Petition For Declaratory Decree, filed March 10, 1943, in Civil Action No. 4451.

5. Respondent's Amended and Supplemental First Counterclaim, filed November 23, 1942, in Civil Action No. 4451.

6. Answer of Petitioner to Respondent's First and Second Counterclaims filed December 14, 1942, in Civil Action No. 4451 (omitting all of the answer to the Second Counterclaim except paragraph 12 thereof).

7. Amended Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim, filed March 1, 1943, in Civil Action No. 4451.

8. Stipulation of August 5, 1943, as to substitution in printed record of summaries of certain pleadings of the respective parties in their earlier forms.

9. Automotive's Motion for an order transferring Civil Action No. 4451 to Executive Committee of the District Court for reassignment to Judge Igoe.

10. Order transferring Civil Action No. 4451 to Executive Committee for reassignment to Judge Igoe, entered March 1, 1943.

11. Order of Judges Barnes, Holly and Sullivan, entered March 3, 1943, reassigning Civil Action No. 4451 to Judge Igoe.

12. Motion to Consolidate Civil Actions Nos. 4382 and 4451.

2034 13. Motion for an Order Directing Kenneth R. Larson to Appear and Testify.

14. Petition on Behalf of Automotive's Attorneys in Support of Plaintiff-Respondent's "Motion For An Order Directing Kenneth R. Larson To Appear and Testify".

15. Motion for Separate Trial.

16. Order of March 27, 1943, consolidating Civil Actions Nos. 4382 and 4451.

17. Order of March 27, 1943, allowing motion for separate trial on certain issues.

18. Order of April 20, 1943, granting leave to Harry C. Alberts to withdraw as counsel and setting the patent issues for trial on a separate date from the issues involving validity of the contracts, Exhibits 4 and 6, set for trial May 10, 1943.

19. Withdrawal of Appearance of Harry C. Alberts, filed May 1, 1943.

20. Plaintiff's Proposed Findings of Fact and Conclusions of Law submitted on June 18, 1943.

21. Findings of Fact and Conclusions of Law submitted by defendants on June 25, 1943.

22. Findings of Fact and Conclusions of Law entered July 12, 1943.

23. Memorandum of Judge Igoe filed July 12, 1943.

24. Final Judgment entered July 12, 1943.

2035 25. Plaintiff-Appellant's Notice of Appeal filed July 22, 1943.

26. Bond on Appeal.

27. Plaintiff-Appellant's Statement of Points.

27a. Order transmitting original Court exhibits to Court of Appeals.

28. Plaintiff-Appellant's Designation of Contents of Record on Appeal.

29. Pre-trial discovery testimony of Kenneth R. Larson given before Judge Igoe on March 27, 1943 (Plaintiff's Exhibit 63).

Print only lines 23 to 26, inclusive, of p. 1 but omit "Proceedings Had And" in line 23 thereof; print pp. 26 to 74, inclusive, but omit the first line of p. 26 and the last four

lines of p. 74; and print p. 76 but omit the first two lines thereof. Omit all other pages not expressly included.

30. Deposition testimony of Walter Carlsen taken April 13, 1943, and Notary Public's certificates attached thereto (Plaintiff's Exhibit 62).

Print only lines 11 to 16, inclusive, of p. 1, and print pp. 3 to 84, inclusive.

31. Deposition testimony of Joseph Johnson taken April 14, 1943 (Plaintiff's Exhibit 17).

Print pp. 1 to 80, inclusive, but omit all but lines 11 to 17, inclusive, of p. 1, p. 2, the last eight lines of p. 46, last five lines of p. 77, p. 78, and the first seventeen lines of p. 79.

32. Deposition testimony of Frederick Glade Wacker taken April 23, 1943 (Defendants' Exhibit 78).

Print lines 11 to 18 of p. 1, and pp. 3 to 114, inclusive, but omit last six lines of p. 65, all but last six lines of p. 66, and lines 4 to 8 and lines 15 to 17, inclusive, of p. 114.

2036 The Wacker deposition testimony shall be inserted at page 609 of the trial transcript where read by Mr. Ooms prior to Mr. Wacker's cross-examination, and as direct testimony given at the trial.

33. Transcript of testimony taken at the trial, omitting—

Page 1, lines 1 to 10, incl.
Page 3 to 65, incl.
Page 136, last 8 lines.
Page 137.
Page 213, last 4 lines.
Page 214.
Page 215, lines 1 to 4, incl.
Page 307, last 5 lines.
Page 308.
Page 369, lines 17 and 18.
Page 379, last 5 lines.
Page 380.
Page 381, lines 1 to 5, incl.
Page 382, lines 10 to 13, incl.
Page 464, last 6 lines.
Page 465.
Page 466, lines 1 to 5, incl.
Page 489, last 3 lines.
Page 524, last 5 lines.

Page 525.
Page 526, lines 1 to 6, incl.
Page 602, last 9 lines.
Pages 603 to 608, incl.
Page 609, lines 1 to 8, incl.
Page 611, last 5 lines.
Page 632, last 11 lines.
Page 633.
Page 634, all but last 3 lines.
Page 636.
Page 637, lines 4 to 13, incl.
Page 638, all but last 3 lines.
Page 655, all but first 4 lines.
Page 656, lines 1 to 5, incl.
Page 711, lines 4 and 5.
Page 721, lines 2 to 6, incl.
Page 722, all but last line.
Page 767, last 3 lines.
Page 796, last line.
Page 797.
Page 798, all but last 4 lines.
Page 872, last 3 lines.
Page 894, last 8 lines.
Page 895.
Page 896, lines 1 to 6, incl.
Page 976, last 7 lines.
Page 977.
Page 978, lines 1 to 6, incl., and last 5 lines.
Page 979 and 980.
Page 981, line 1.
Page 1029, last 2 lines.
Page 1058, last 6 lines.
Page 1059.
Page 1060, lines 1 to 4, incl.
Page 1135, last 5 lines.
Page 1136.
Page 1137, lines 1 to 4, incl.
Page 1166, last 5 lines.
Page 1167, first 3 lines.

34. Plaintiff's Documentary Exhibits

3. Contract of Dec. 20, 1940 between Snap-On and Larson-Precision, with assignment of Larson Application Ser. No. 332,723 by Snap-On to Larson and Precision.
4. October 26, 1938 Letter, Snap-On to Larson.

7. November 11, 1940 Letter, Snap-On to Precision.
8. October 18, 1938 Letter, Alberts to Snap-On.
8-A. Larson Affidavit of October 18, 1938.
10. December 19, 1940 Letter, Albert to Snap-On (Same as Defendants' Exhibit 69).
13. Alberts Memorandum of Dec. 18, 1930, re conference of Nov. 28, 1940.
16. December 26, 1940 Letter, Fidler to Raftery.
18. Snap-On and Precision Agreement of January 16, 1941.
19. Snap-On and Precision supplemental Agreement (Rider) of March 26, 1941.
20. January 31, 1941 Letter, Alberts to Krichiver.
21. Letters of 4/27/40, 7/15/40, 12/10/40, 1/9/41 and 1/29/41 referred to in Plaintiff's Exhibit 20.
22. December 26, 1940 Letter, Fidler to Alberts.
23. December 31, 1940 Letter, Fidler to Hobbs.
24. Drawings of Larson Patent No 2,312,104 of Feb. 23, 1943.
25. Certified Copy of Original Petition and Oath of Application of Larson Patent No. 2,312,104 of Feb. 23, 1943.
26. June 30, 1941 Letter, Wacker to Fidler.
29. December 6, 1940 Letter, Fidler to Hobbs.
30. Letter of December 18, 1940, Lindsey to Alberts (Same as Defendants' Exhibit 74).
2038 31. December 18, 1940 Letter, Lindsey to Hobbs.
32. December 18, 1940 Letter, Alberts to Hobbs.
33. December 18, 1940 Letter, Hobbs to Precision and Larson (Same as Defendants' Exhibit 67).
34. December 19, 1940 Letter, Hobbs to Alberts.
35. December 19, 1940 Letter, Hobbs to Precision.
36. December 23, 1940 Letter, Fidler to Hobbs.
37. December 26, 1940 Letter, Fidler to Hobbs.
38. December 26, 1940 Letter, Hobbs to Alberts.
39. December 28, 1940 Letter, Fidler to Hobbs.
40. Decemer 28, 1940 Letter, Alberts to Hobbs.
41. December 30, 1940 Letter, Hobbs to Precision.
42. December 30, 1940 Letter, Hobbs to Fidler.
43. January 2, 1941 Letter, Hobbs to Alberts.
44. January 4, 1941 Letter, Hobbs to Fidler and enclosed statement of wrenches on order.
45. Letter of January 6, 1941, Fidler to Hobbs.
46. July 2, 1941 Letter, Fidler to Hobbs.

47. July 3, 1941 Letter, Hobbs to Precision.
48. July 16, 1941 Letter, Precision to Hobbs.
49. July 21, 1941 Letter, Hobbs to Fidler.
50. December 19, 1940 Letter, Hobbs to Alberts.
51. Photostatic Copy of Drawings (2 sheets) of second Larson Application.
56. Photostatic Copy of Interference Exhibit 27 Drawing (Defendants' Exhibit 9 is the original drawing).
57. Standard Thomasma Drawing used by Salmon (Same as Defendants' Exhibit 22).
58. Salmon's Work Sheet (Same as Defendants' Exhibit 12).
59. Memorandum of Dec. 11, 1940 entitled "Minimum Terms for Total Settlement".
60. June 3, 1940 Letter, Wacker to Fidler.
61. May 31, 1940 Letter, Fidler to Wacker.
2039 61-A. Copy of Patent Office Examiner's Decision of May 29, 1940.
64-A. Stipulation re certified copy of Larson application Serial No. 232,723 as filed, Plaintiff's Exhibit 64.
65. Larson Patent No. 2,279,792 in suit.
66. Zimmerman Patent No. 2,283,888 in suit.
67. Zimmerman Patent No. Re. 22,219 in suit.
68. Stipulation with respect to certain Exhibits.

35. Defendants' Documentary Exhibits

4. Contract of December 20, 1940 between Ammco, Larson and Precision.
5. Contract of December 20, 1940 between Ammco and Snap-On.
9. Drawing, Interference Exhibit 27.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 56.)
11. November 5, 1940 memorandum letter, Wacker to Fidler.
12. Salmon Work Sheet.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 58.)
13. Fidler Memoranda of Oral Reports of Investigator.
14. Draft of Proposed Agreement between Ammco and Snap-On, Precision and Larson.
15. Draft of Proposed Agreement between Ammco and Snap-On.
16. Draft of proposed agreement between Ammco and Precision and Larson.

17. June 25, 1941 letter, Wacker to Thomasma.
18. July 1, 1941 letter, Thomasma to Wacker.
19. December 27, 1940 letter, Wacker to Fidler.
21. Thomasma Affidavit executed November 15, 1940.

2040 22. Thomasma Drawing used by Salmon.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 57.)

22-A. Bottom portion of Defendants' Exhibit 22.
26. John A. Wise Invoices dated 8/10/40 to 1/4/41.
27. June 27, 1942 receipt, Thomasma to Fidler.
28. April 1, 1941 letter, Wacker to Thomasma.
29. April 16, 1941 letter, Thomasma to Wacker.
30. April 21, 1941 letter, Wacker to Thomasma.
31. June 4, 1941 letter, Wacker to Thomasma.
32. June 21, 1941 letter, Wacker to Thomasma.
33. June 25, 1941 letter, Wacker to Thomasma.
34. July 2, 1941 letter, Fidler to Wacker.
34-A. June 30, 1941 letter, Thomasma to Fidler.
35. July 8, 1941 letter, Wacker to Thomasma.
36. July 28, 1941 letter, Wacker to Thomasma.
37. March 25, 1942 letter, Thomasma to Wacker.
38. April 1, 1942 letter, Thomasma to Wacker.
39. April 22, 1942 letter, Thomasma to Wacker.
40. April 28, 1942 letter, Wacker to Thomasma.
41. June 12, 1942 letter, Wacker to Thomasma.
43. October 10, 1940 letter, Fidler to Wacker.
44. April 21, 1941 letter, Wacker to Fidler.
45. June 20, 1941 letter, Fidler to Thomasma.
46. June 24, 1941 letter, Thomasma to Fidler.
47. June 25, 1941 letter, Wacker to Fidler.
48. June 27, 1941 letter, Fidler to Thomasma.
49. June 30, 1941 letter, Thomasma to Fidler.
50. December 1, 1941 letter, Thomasma to Fidler.

2041 52. Salmon Invoice of Dec. 27, 1940.
60. February 3, 1941 letter, Wacker to Fidler.
61. Larson-Snap-On Agreement of Sept. 28, 1938.
62. November 11, 1940 letter, Alberts to Larson and Carlsen.
63. December 4, 1940 letter, Hobbs to Precision.
64. Draft of Letter, dated December 4, 1940, proposed to be sent by Hobbs to Fidler.
65. December 4, 1940 Statement of Haight, Goldstein & Hobbs.

66. December 6, 1940 Letter, Hobbs to Fidler.
67. December 18, 1940 Letter, Hobbs to Larson.
(Not to be reproduced in record an appeal. Is a duplicate of Plaintiff's Exhibit 33.)
68. December 19, 1940 Letter, Lindsey to Alberts.
69. December 19, 1940 Letter, Alberts to Snap-On.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 19.)
70. Alberts' Memorandum dated November 21, 1940.
71. December 3, 1940 Letter, Alberts to Fidler.
72. Alberts' Memorandum dated Dec. 11, 1940.
72-A. December 12, 1940 Letter, re Defendants' Ex. 72, Alberts to Snap-On.
73. December 17, 1940 Letter, Alberts to Fidler.
74. December 18, 1940 Letter, Lindsey to Alberts.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 30.)
75. December 19, 1940 Letter, Hobbs to Alberts.
76. December 19, 1940 Letter, Alberts to Lindsey.
77. Notice of Taking Interference Testimony on Dec. 23, 1940.
79. October 13, 1939 Letter, Fidler to Wacker.
80. November 9, 1939 Letter, Wacker to Fidler.
81. November 13, 1939 Letter, Fidler to Wacker.
81-A. Dun & Bradstreet Report on Precision.
82. November 21, 1939 Letter, Fidler to Wacker.
82-A. Summary of Precision Articles of Incorporation.
2042 83. November 24, 1939 Letter, Wacker to Fidler.
84. June 4, 1940 Letter, Fidler to Wacker.
85. July 22, 1940 Letter, Fidler to Wacker.
86. July 24, 1940 Letter, Wacker to Fidler.
87. August 5, 1940 Letter, Fidler to Wacker.
88. August 16, 1940 Letter, Fidler to Wacker.
89. September 20, 1940 Letter, Fidler to Wacker.
90. October 19, 1940 Letter, Fidler to Wacker.
91. November 4, 1940 Letter, Fidler to Wacker.
91-A. October 31, 1940 Memo Letter, Stroditz and McFarland to Fidler.
92. November 23, 1940 Letter, Fidler to Wacker.
93. November 23, 1940 Letter, Fidler to Wacker.
94. December 21, 1940 Letter, Fidler to Wacker.
95. December 26, 1940 Letter, Fidler to Wacker.
96. December 26, 1940 Letter, Fidler to Wacker.

97. December 28, 1940 Letter, Fidler to Wacker.
98. January 24, 1941 Letter, Fidler to Wacker.
99. January 31, 1941 Letter, Fidler to Wacker.
100. June 27, 1941 Letter, Fidler to Wacker.
101. November 29, 1940 Letter, Hobbs to Fidler.
102. December 6, 1940 Letter, Hobbs to Thomasma.
103. November 19, 1940 Letter, Alberts to Raftery.

36. Plaintiff's Physical Exhibits

14. Raftery Notebook dated Oct. 7, 1940.
15. Raftery Notebook dated Oct. 30, 1940.
52. Wrench Model from which Application Drawings of Larson Patent No. 2,312,104 were made.
64. Certified copy of Larson Application Ser. No. 232,723, as filed (on which Larson Patent No. 2,279,792 issued).

2043 37. Defendant's Physical Exhibits.

1. Wrench manufactured by Ammco and sold to Snap-On.
2. Wrench manufactured by Precision in 1939-1940 and covered by Larson Application in Interference.
3. Wrench presently manufactured and sold by Precision to Snap-On and charged to infringe.
6. Certificate of State of Illinois re commission of Esther Meltzer as Notary Public.
7. Board of five wood patterns. (Interference exhibits).
8. Board of wrenches and parts (Interference exhibits).
10. Transcribed depositions and portions thereof taken on behalf of Larson in Interference 77,565.
104. Wrench comprising Larson Exhibit 31 in Interference 77,565.
105. Wrench comprising Larson Exhibit 37 in Interference 77,565.
106. File of Documentary Exhibits offered in evidence during taking of Larson's proofs in Interference No. 77,565.

38. Earlier forms of pleadings of the respective parties to be transmitted to Court of Appeals along with the physical exhibits and not to be reproduced in the printed record on appeal.

Civil Action No. 4382.

a. Complaint filed June 15, 1942.
b. Amended Complaint filed July 22, 1942.

c. Answer of Defendants to Amended Complaint filed August 6, 1942.

d. Answer of Defendants To Amended and Supplemental Complaint filed December 14, 1942.

e. Notice of additional defenses to be relied upon at trial by defendants served on plaintiff December 17, 1942.

f. Amendment to Answer to Amended and Supplemental Complaint filed December 30, 1942.

2044 Civil Action No. 4451.

g. Petition for Declaratory Decree filed July 6, 1942.

h. Amended Petition for Declaratory Decree filed July 21, 1942.

i. Second Amended Petition for Declaratory Decree filed July 31, 1942.

j. Respondent's Answer to Second Amended Petition for Declaratory Decree and Counterclaim filed September 23, 1942.

k. Answer of Intervenor to Respondent's First Counterclaim filed September 8, 1942.

l. Answer of Petitioner to Respondent's Second Counterclaim filed December 14, 1942.

m. Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim filed December 14, 1942.

n. Motion to Dismiss Certain Portions of Second Amended Petition and Petitioner's Answer to Respondent's First Counterclaim filed January 13, 1942.

o. Motion to Dismiss Certain Portions of Intervenor's Answer to Respondent's First Counterclaim filed January 13, 1942.

Davis, Lindsey, Smith & Shouts,
Attorneys for Plaintiff.

Harry W. Lindsey, Jr.,
Raymond E. Fidler,
Of Counsel.

April 14, 1942. K. R. LARSON 2,279,792

TORQUE WRENCH

Filed Oct. 1, 1938 2 Sheets-Sheet 1

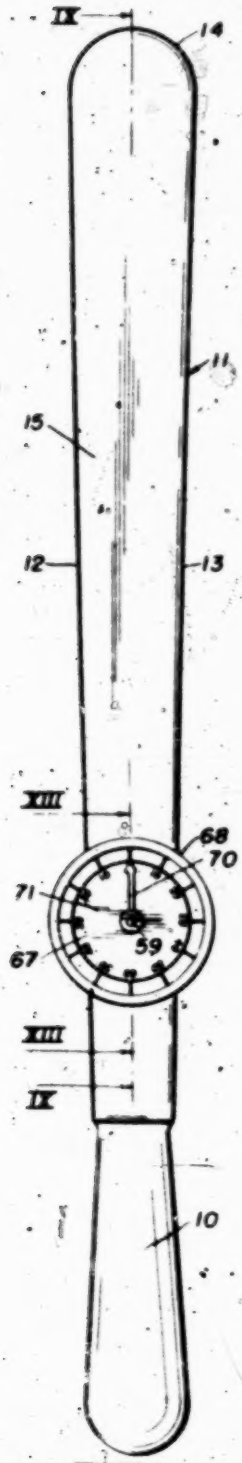


FIG. 1

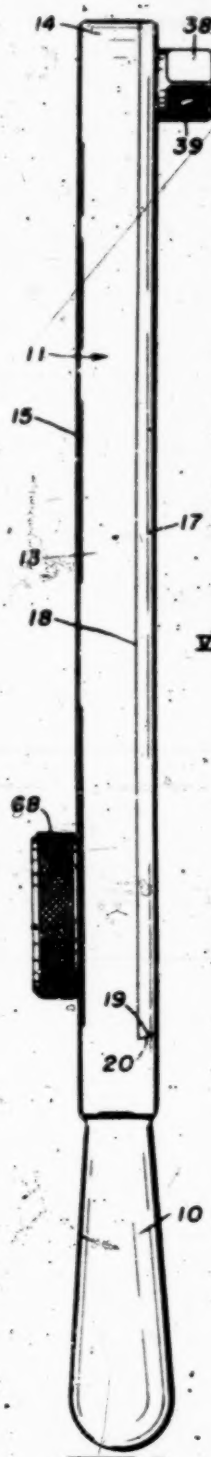


FIG. 2

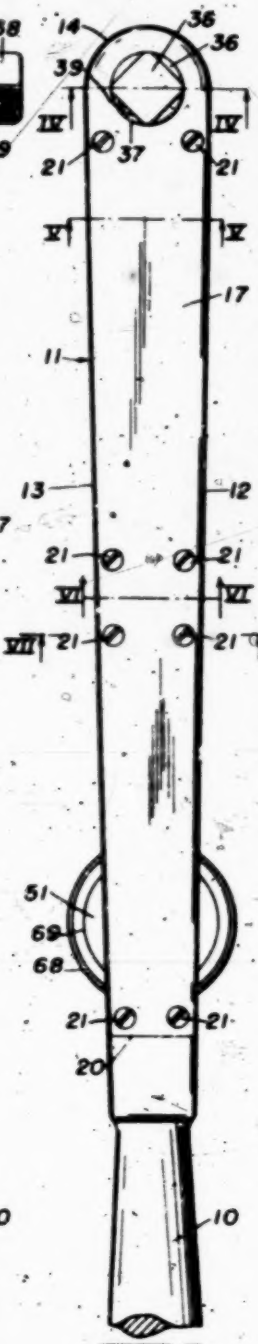


FIG. 3

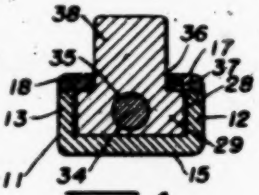


FIG. 4

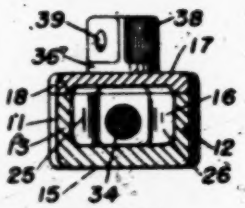


FIG. 5

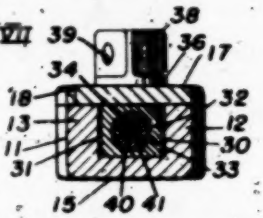


FIG. 6

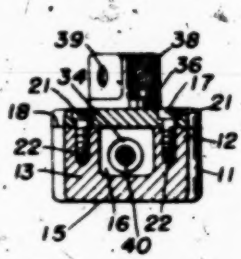


FIG. 7

INVENTOR
KENNETH R. LARSON.

BY Harry C. Schultz

ATTORNEY.

1150

April 14, 1942. K. R. LARSON 2,279,792

TORQUE WRENCH

Filed Oct. 1, 1938 2 Sheets-Sheet 2

FIG. 8

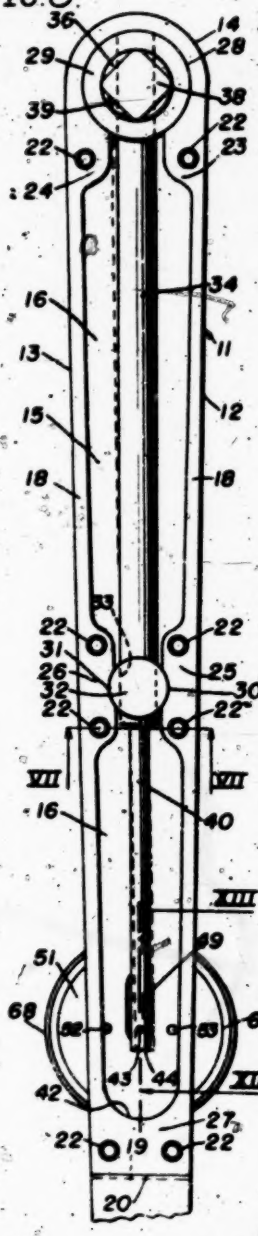


FIG. 9

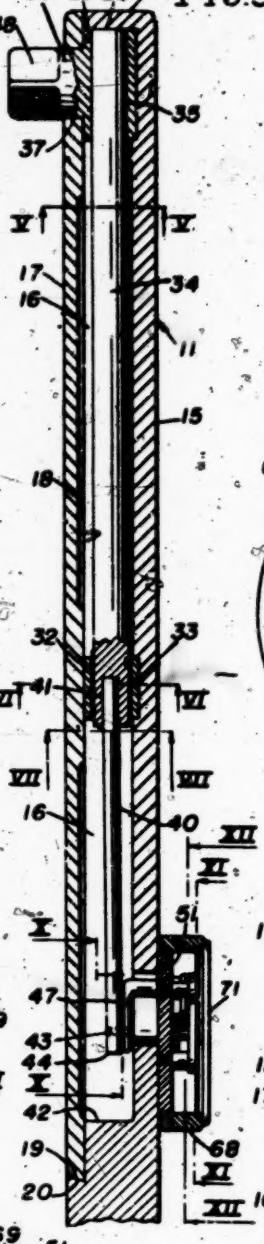


FIG. 11

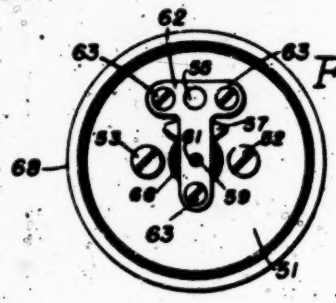
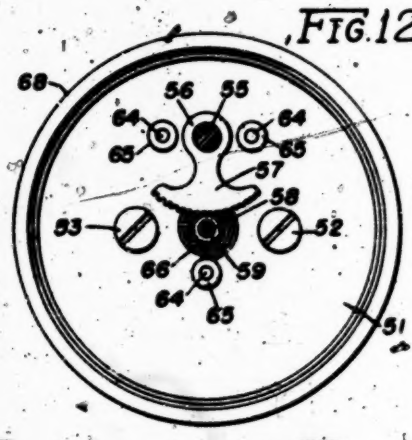


FIG. 12



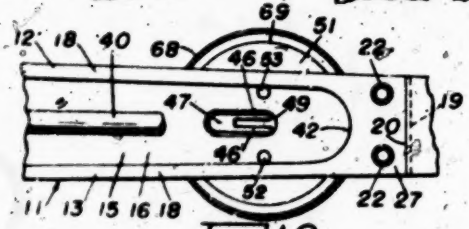


FIG. 10

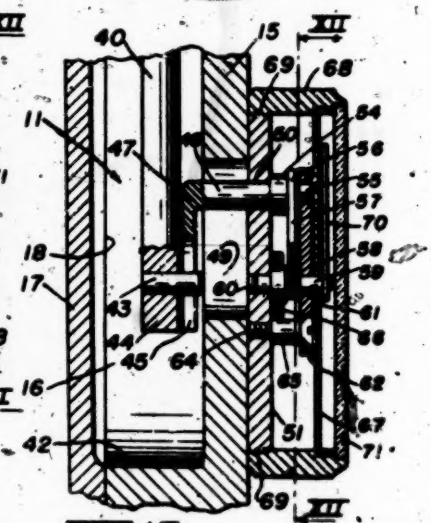


FIG. 13

INVENTOR
KENNETH R. LARSON
BY Harry C. Lemmon
ATTORNEY

Patented Apr. 14, 1942

2,279,792

UNITED STATES PATENT OFFICE

2,279,792

TORQUE WRENCH

Kenneth R. Larson, Des Plaines, Ill., assignor, by direct and mesne assignments, to Automotive Maintenance Machinery Co., North Chicago, Ill., a corporation of Illinois

Application October 1, 1938, Serial No. 232,723.

32 Claims. (Cl. 265—1)

This invention relates to turning devices and more particularly to nut turning wrenches, although certain features thereof may be employed with equal advantage for other purposes.

It contemplates more especially the provision of a simple, dependable, accurate and compact torque wrench that will instantly measure the force supplied in nut turning and similar movements.

Numerous types of torque turning wrenches have heretofore been proposed, but these have not proven entirely satisfactory owing to their substantially increased bulk over ordinary nut turning tools and their failure to render a dependable and uniform service. In gauging the torque applied in any nut or other fastening expedient such as a screw. There has been a long felt want for a torque turning tool that is simple, compact, dependable, accurate, and instantly indicates the desired tension or torque applied to a nut or other fastening expedient.

One object of the present invention is to simplify the construction and improve the operation of devices of the character mentioned.

Another object is to provide a simple and compact torque indicating wrench that is dependable in operation.

Still another object is to provide an improved turning tool having dependable torque indicating means associated therewith for measuring the torque applied in the turning operation.

A further object is to provide a turning tool with a single beam for flexing responsive to the application of force in turning fastening expedients such as nuts, screws, and the like to measure the torque with which such is being applied.

A still further object is to provide an improved nut turning wrench having a single beam in the form of a uniform rod that is operatively connected to a torque indicator at its point of greatest flexing displacement.

Still a further object is to provide a wrench having a single elongated rod disposed longitudinally therein for flexing responsive to the application of force in nut turning to indicate the torque of applied force commensurate with the instant of flexing at one extremity thereof.

Other objects and advantages will appear from the following description of an illustrative embodiment of the present invention.

In the drawings:

Figure 1 is a plan view of a wrench embodying features of the present invention.

Figure 2 is a side view in elevation of the wrench shown in Figure 1.

Figure 3 is a bottom plan view of the wrench shown in Figure 1, part of the handle being broken away for convenience.

Figure 4 is a sectional view taken substantially along line IV—IV of Figure 3.

Figure 5 is a sectional view taken substantially along line V—V of Figure 3, and Figure 9.

Figure 6 is a sectional view taken substantially along line VI—VI of Figures 3 and 9.

Figure 7 is a sectional view taken substantially along line VII—VII of Figure 6.

Figure 8 is a bottom view of the wrench shown in Figure 3 with the bottom plate removed to illustrate the inner construction, the handle being broken away for convenience.

Figure 9 is a sectional view taken substantially along line IX—IX of Figure 1.

Figure 10 is a fragmentary broken view taken substantially along line X—X of Figure 9.

Figure 11 is a plan view of an indicator mechanism viewed substantially from line XI—XI of Figure 9 with the dial removed therefrom.

Figure 12 is a sectional view of the indicator mechanism taken substantially along line XII—XII of Figures 9 and 13.

Figure 13 is an enlarged sectional view of the indicator mechanism taken substantially along line XIII—XIII of Figures 1 and 8.

The structure selected for illustration comprises a solid handle member 10 of standard construction having an elongated chambered wrench shank or body 11 cast or otherwise shaped to present inclined side walls 12 and 13 to terminate in a semi-circular extremity or head 14. The handle 10 with its chambered body 11 is preferably though not essentially cast from an aluminum alloy so as to possess the desired strength and lightness for convenience and manipulation in nut turning as will appear more fully hereinafter. It will be observed that the handle shank or body 11 consists of the inclined side-walls 12—13 which converge in the direction of the handle 10 with an intermediate body wall 15 formed integral therewith to define an elongated chambered interior 16.

The shank 11 is normally covered by a solid plate 17 that is shaped to conform with the configuration of the body wall 15 to confront therewith and serve as a complement of an open edge 18 that extends around the side walls 12—13 of the semi-circular extremity 14, the face plate 17 being shaped to correspond therewith and its lower inclined edge 19 cooperates with a correspondingly inclined recess 20 (Figures 2 and 9) formed in the shank 11 proximate to the solid

handle 10. A plurality of threaded screw fasteners 21 project through apertures in the plate 17 to engage correspondingly threaded bores 22 in the edge 18 that extends along the side walls 12—13 of the handle shank or body 11 and end 14, thereby enclosing the chamber 16 and confining the torque resisting instrumentalities and measuring instrumentalities to be described hereinafter.

It will be noted that the handle shank or body 10 and especially the inclined side walls 12—13 are reinforced in the region of the threaded bores 22 by increasing the thickness of the cast metal as at 23—24, 25—26 and 27 which is a solid portion of the handle shank 11 proximate to the lower extremity of the chamber 16 provided therein. The semi-circular head 14 of the body 11 is provided with a circular recess 28 corresponding in curvature therewith and measured to receive an accurately fitting revoluble or turning head member 29 of corresponding shape and size for rotary association therein. It is to be noted that the circular recess 28 communicates with the chamber 16 in the handle shank 11, and the entire head portion is reinforced by the enlarged thicknesses 23—24 of the side walls 12—13 in the region of the recess 28.

Now, then, the enlarged thicknesses 25—26 of the side walls 12—13 are approximately along a transverse, median line of the handle 10 and its contiguous shank or body 11, and these are circularly recessed to provide interrupted arcuate portions 30 and 31 which receive a cylindrical bearing or bushing 32 of pressed or other suitable material. The bushing 32 is provided with a diametrically disposed bore 33 which freely receives a closely fitting cylindrical rod 34 that extends therethrough from the revoluble member 29 to serve as a torque resisting beam.

To this end, the cylindrical elongated rod 34 is, in this instance, of uniform diameter and projects diametrically through the revoluble member 29 as at 35 for fixed engagement therewith to constitute a single acting unit or member. As shown, the revoluble member 29 has a transversely disposed cylindrical extension 36 which is journalled in a correspondingly shaped aperture 37 provided in the cover plate 17. The cylindrical extension 36 is, in this instance, formed integral with the revoluble member 29 and terminates beyond the cover plate 17 in a polygonal shank 38 for registry with a correspondingly shaped and sized recess formed in the wrench socket or other turning implement as commercial practice may dictate for use therewith.

It will be observed, therefore, that any wrench socket of standard construction may be detachably associated with the journalled shank 38 that is preferably though not essentially provided with a spring impelled ball detent 39 to preclude accidental separation therewith. While the elongated beam 34 terminates just beyond the bearing or bushing 32, in this instance, which serves as a floating mount therefor, it should be appreciated that such may extend appreciably therebeyond depending upon the dictates of commercial practice. It has been found more proficient, however, from a manufacturing standpoint to terminate the elongated cylindrical beam 34 just beyond the floating mount 32 thereof and join therewith a smaller elongated rod 40 of comparatively smaller diameter for pressed fitting axial engagement in an end bore 41 provided in the free extremity of the elongated beam 34. This effects the equivalent of an integral joinder between the beam 34 and its reduced extension 40 that terminates proximately to the lower end 42 of the chamber 16 in the body 11.

It should be noted that the beam 34 together with its reduced extension 40 would function exactly the same even though these were turned or otherwise shaped from a single unit; however, such construction would be somewhat more expensive from a production standpoint than the pressed co-axial fitting relationship between the rods 34 and 40 serving as a floating beam on the mount 32. The reduced rod 40 has a pin 43 which projects transversely therethrough proximate to the lower extremity 44 thereof for registry between two furcations 45—46 in a lever 47 that is disposed in the chamber 16 and has an offset arm 48 extending through an opening 49 (Figure 13) in the wall 15 of the body 11.

The offset arm 48 is journalled in a correspondingly sized bore 50 provided in the bottom plate 51 constituting a part of the indicator mechanism as will appear more fully hereinafter. The bottom plate 51 constitutes a part of the indicator casing and is fixed to the wall 15 of the wrench body 11 by means of threaded studs 52—53. The lever arm 48 has an enlarged peripheral shoulder 54 terminating in a reduced stud 55 over which is pressed an apertured arm 56 of a gear segment 57. The gear segment 57 meshes with a pinion 58 mounted on a stub shaft 59 which is journalled in axial aligned bores 60 and 61 provided in the casing plate 51 and a bracket plate 62 in parallel spaced relation therewith.

The bracket plate 62 is, in this instance, substantially T-shaped and is held or mounted in spaced parallel relation to the indicator casing bottom 51 by means of threaded studs 63, in this instance three, projecting through the extremities thereof for engagement with correspondingly threaded bores 64 (Figure 12) formed in the bottom indicator casing plate 51. It should be observed that the fastening studs 63 are provided with an enlarged shank 65 serving as a spacer collar beyond the reduced threaded extremity thereof that engages the correspondingly threaded bores 64 (Figure 13), thereby maintaining the T-shaped bracket 62 in spaced relation with the indicator casing bottom plate 51. The bracket 62 also serves as a bearing for the reduced extremity 66 of the lever arm 48 to insure the proper mounting of the gear segment 57 and maintaining the meshing engagement thereof with the pinion 58.

A spiral spring 66 envelops the stub shaft 59 on which the pinion 58 is mounted or integrally formed, to normally urge or return the indicator instrumentalities to an initial position. A calibrated dial 67 is mounted in a cylindrical collar 68 that threadedly engages the bottom plate 51 as at 69 to constitute a casing for the indicator instrumentalities. A pointer 70 is fixed to the reduced extremity of the pinion shaft 59 which projects beyond the indicator dial 67 to designate in foot pounds the torque exerted in turning a nut or other fastening expedients by proper engaging attachment with the polygonal shank 38 while the turning force is applied to the handle 10. A glass or other transparent crystal 71 is fitted to the indicator casing 68 to preclude obstruction to the pointer 70 and avoid the entrance of foreign substances therein which would

impair the accuracy and operation of the indicating instrumentalities.

This flexes the beam 34—40 in one direction or the other depending upon the direction of the applied force to the handle 10, and this flexing will vary proportionately to the force applied to flex the beams 34—40 as indicated by the dotted outline thereof in Figure 8. The beam 34 together with its reduced extension 40 is preferably turned or otherwise shaped from a high quality steel alloy that has limited flexibility and a comparatively high elastic limit so that it will uniformly flex and return to its initial position to provide accurate readings within the range and elastic limit thereof without variation within ordinary requirements. Any number of high quality steel alloys may be used for this purpose, and by way of example the beam 34—40 can be advantageously constructed from an oil hardened tool steel.

It will be observed from the foregoing description of an illustrative embodiment constituting the subject matter hereof, that clockwise rotation imparted to the handle 10 (viewed from Figure 1) during the engagement of the polygonal shank 38 with a nut or other fastening implement, will cause flexing of the beam ends 34—40 as shown in the dotted outline in Figure 8. This action will cause slight longitudinal displacement of the beam 34—40 relative to its mount 32 and the latter will simultaneously rotate for a fractional extent to facilitate the displacement of the beam 34—40 in opposite directions responsive to the flexing thereof. The flexing of the beam 34—40 will correspondingly displace the pointer 70 which is connected to indicator instrumentalities calibrated to the selected size or capacity of the beam 34—40.

Then, too, it should be appreciated that the attachment of the indicator casing 68 with its bottom plate 51 on the body wall 15 aways maintains the indicator instrumentalities in operative connection with the beams 34—40, thereby rendering the cover plate 17 removable for inspection, replacement, and cleansing purposes without interfering with the setting and operative connection between the beam extensions 40 and the indicator lever 67. The operative connection of the indicator lever 67 to the terminal free end of the beams 34—40 also provides for the measurement of the torque at the point of maximum deflection of the torque resisting beam 34—40, thereby affording more accurate measurements than would otherwise be possible.

With the arrangement of parts above described, a very simple, dependable and accurate torque resisting and measuring beam 34—40 has been incorporated into a wrench or other turning devices without sacrificing compactness or encumbering the turning tool with any objectionable added weight. Various changes may be made in the embodiment of the invention herein specifically described without departing from or sacrificing any of the advantages of the invention or any features thereof, and nothing herein shall be construed as limitations upon the invention, its concept or structural embodiment as to the whole or any part thereof except as defined in the appended claims.

I claim:

1. In a torque wrench, the combination with a handle member, of a turning head member journalled in one extremity of said handle member, a yieldable torque resisting beam anchored in said turning head member, a supporting bearing carried by said handle member and engaging said beam intermediate the extremities thereof, and torque indicating means operatively connected to the free extremity of said yieldable beam.

2. In a torque wrench, the combination with a handle member, of a turning head member journalled in one end of said handle member, a yieldable torque resisting beam anchored in said turning head member, a bearing slidably engaging said beam intermediate the extremities thereof and journalled in said handle member, and calibrated indicating means operatively connected to the free extremity of said yieldable beam.

3. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated yieldable torque resisting rod anchored at one extremity thereof to said head member, a bushing journalled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated yieldable rod terminating in a free extremity beyond said bushing, and torque indicating means operatively connected to the free extremity of said yieldable rod which is displaced responsive to applying force to said handle means.

4. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod anchored at one extremity thereof to said head member, a bushing journalled in said handle member and engaging said yieldable rod intermediate the extremities thereof, said elongated yieldable rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated yieldable rod, and torque indicating means operatively connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

5. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journalled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated yieldable rod terminating in a free extremity beyond said bushing and extending along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said rod which is displaced responsive to applying force to said handle means.

6. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journalled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing and extending along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said rod and which extremity is displaced in response to the application of force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

7. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journalled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

8. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journalled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

9. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod anchored at one extremity thereof to said head member, a bushing journalled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

10. In a torque wrench, the combination with a handle member, of a turning head member journalled in said handle member, an elongated yieldable torque resisting rod of substantially uniform cross-section anchored at one extremity thereof to said head member, a guide in said handle member for reciprocally receiving said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said guide, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and freely cooperating with said pin connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means with said turning head member in registry with a part to be turned.

11. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing in said chambered handle member to reciprocally receive said yieldable rod intermediate the extremities thereof, said bushing being journalled in said handle member, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

12. In a torque wrench, the combination with a chambered handle member, of a turning head member journalled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journalled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod of substantially uniform diameter projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means into said chambered handle member and cooperating with said pin connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

13. A torque wrench comprising, an elongated body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, an elongated torque resisting beam disposed substantially parallel with respect to said body and yieldably opposing relative rotation of said members, indicating means, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named, and means projecting from the end of said beam nearest said grip portion and connecting said end of said beam with said indicating means.

14. A torque wrench comprising, an elongated body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, a yieldable torque resisting beam having one end thereof connected to said head member and its opposite end flexibly connected with said body member, indicating means, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named, and means connecting said opposite end of said beam with said indicating means.

15. A torque wrench comprising, an elongated body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, a yieldable torque resisting beam carried by said head member and flexibly connected to said body member, indicating means, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named with said indicating means disposed in close proximity to said grip portion where it may readily be observed by the wrench operator, and means including an extension on the end of the beam adjacent to said grip portion adapted to engage said indicating means and operate the latter as said beam is flexed.

16. A torque wrench comprising, a body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, an elongated torque resisting beam between said body and head members and having one end rigidly connected to one of said members and its other end flexibly connected to the other of said members so as to yieldingly resist relative rotation of said members, an indicator carried by one of said members in close proximity to said grip portion and having an operating-part, and means for operating said indicator as said beam is flexed which includes an extension on said other end of said beam operably engaged with said operating part.

17. A torque wrench comprising a body member, having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, a yieldable torque resisting beam between said body and head members and extending longitudinally of said body member, an indicator carried by said body member in close proximity to said grip portion and having an operating-part, and means for operating said indicator as said beam is flexed which includes a longitudinally projecting extension on the end of said beam nearest said grip portion operably engaged with said operating-part.

18. A torque wrench comprising, a body member, a head member rotatably carried by said body member, a torque resisting beam carried at one end by one of said members, means providing a pivotal connection between the other end of said beam and the other of said members, indicating means, and means for directly connecting the end portion of said beam remote from said head member to said indicating means.

19. A torque wrench comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, a yieldable torque resisting beam having one end portion connected to said head member and extending away therefrom longitudinally of said body member, means providing a pivotal connection between the opposite end portion of said beam and said body member, indicating means, and means directly connecting the pivotally-connected end portion of said beam to said indicating means.

20. A torque wrench for use with an indicator for measuring the force applied to the work comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, an elongated torque resisting beam carried by one of said members, a flexible connection between said beam and the other of said members, whereby said beam yieldingly resists relative rotation of said members, and indicator-operating means directly connected to the end portion of said beam remote from said head member to actuate said indicator to measure the flex of said beam.

21. A torque wrench comprising, a pair of rockably connected members, one of which is adapted to be operably engaged with the work and the other is adapted to receive the pressure to be applied to the work, a torque resisting beam having one end thereof carried by one of said members and having its opposite end connected to the other of said members for yieldably resisting relative rock movement of said members, said connection being such as to provide for free flexing movement of said opposite end of said beam, indicating means, and means for directly connecting said indicating means to said beam at its end having free flexing movement.

22. A torque wrench comprising, an elongated body member, a head member rotatably connected to said body member, a substantially cylindrical torque resisting beam between said body and head members and connected thereto at its opposite end portions for yieldably resisting relative rotation of said members, indicating means, and an axial extension projecting from one end portion of said cylindrical beam and having operative engagement with said indicating means, whereby to measure the flex of said cylindrical beam responsive to the application of force to said body member.

23. A torque wrench comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, a yieldable torque resisting beam carried by said head member and extending away therefrom longitudinally of said body member, means connecting the end portion of said beam opposite said head member to said body member, said means permitting pivotal movement as well as longitudinal slide movement of the end portion of the beam relative to said body member, indicating means, and an extension on the body-connected end portion of said beam operably connected to said indicating means for measuring the flex of said beam as said head and body members are relatively rotated.

24. A torque wrench comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, a yieldable torque resisting beam connected at one end portion to said head member and extending away therefrom longitudinally of said body member, means providing a pivotal connection between the opposite end portion of said beam and said body member, indicating means, and an extension on the pivotally-connected end portion of said beam operably connected to said indicating means for indicating the flex of said beam.

25. A torque wrench comprising, a chambered casing, a detachable cover plate for said casing, a head member rotatably supported in said casing adjacent one end thereof, a torque resisting beam housed in said casing and having one end connected to said head member and its other end flexibly connected to said casing at a point longitudinally removed from said head member, an indicator carried by said casing, and means supported by the casing-connected end portion of said beam and operatively connected with said indicator for operating the latter, said head member, beam, indicator, and means being so supported independently of said cover that said cover may be removed without disturbing said in-

dicator and the operative relationship of the wrench parts.

26. A torque wrench comprising an elongated chambered body member having a grip portion at one end thereof, a head member rotatably carried in the chamber of said body member, said head member having an extension adapted to receive a work-engaging member, a yieldable torque resisting beam in said chamber opposing relative rotation of said members, indicating means carried by the top wall of said chamber and operable upon relative rotation of said rotatable members, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named, and a detachable cover plate for said chambered body member arranged so that it may be removed without disturbing the operative relationship of the wrench parts, said cover plate having an opening through which said extension projects and being arranged so as to confine said head member against substantial axial movement between said top wall and the inner surface of said cover plate.

27. A torque measuring wrench comprising, a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, said work-engaging member having a bore formed therein and extending across the axis of rotation of said work-engaging member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said bore and having its opposite end arranged to have a force applied thereto through said handle member, indicator means responsive to flexing of said spring bar and consequent relative rock movement of said work engaging and handle members for indicating the force applied to the work, and means operatively connecting said opposite end of said spring bar with said indicator means.

28. A torque measuring wrench comprising, a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, said work-engaging member having a bore formed therein and extending across the axis of rotation of said work-engaging member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said bore, means pivotally connecting the opposite end of said spring bar to said handle member, indicator means responsive to flexing of said spring bar and consequent relative rock movement of said work-engaging and handle members for indicating the force applied to the work, and means including an element connecting said pivotally-connected end of said spring bar with said indicator means.

29. In a torque wrench, the combination with an elongated wrench body member, of a handle member extending from one end of said body member and of substantially lesser length than said body member, a turning head member operatively connected to said body member proximate to the other end thereof, a yieldable elongated torque resisting beam extending between said handle member and said turning head member and connected to said turning head member, and calibrated indicating means operatively connected to the free extremity of said torque resisting beam to measure the flex of said yieldable torque resisting beam responsive to applying force to said handle member.

30. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated and yieldable torque resisting rod interposed between said handle member and said turning head member and connected to said turning head member, a rod bearing journaled in said handle member to freely receive said rod therethrough, and calibrated indicating means operatively connected to the free extremity of said yieldable rod.

31. A torque wrench comprising: a handle member including an elongated body member having a chamber extending throughout substantially the full length thereof, said body having a longitudinally extending grip portion at one end thereof; an indicator carried by said handle member, said indicator being located at the end of said chamber nearest to said grip portion; a head member having an enlarged portion in said chamber and a relatively smaller portion extending exteriorly of said chamber and adapted to be operatively connected with the work; elongated substantially cylindrical rod means in said chamber, one end of said elongated rod means being fixedly secured to the enlarged portion of said head member and extending radially from said enlarged portion and lengthwise of said chamber toward said grip portion, said enlarged portion of said head member being so arranged and operatively connected with said handle member that it can turn relative to said handle member in proportion to the force applied to the work, the opposite end of said elongated rod means being free and unrestrained against movement in opposite directions in said chamber, said free end being moved upon turning of said enlarged portion of said head member relative to said handle member; and means between said indicator and the free end of said elongated rod means and extending angularly of the free end of said elongated rod means operatively connecting the free end of said elongated rod means to said indicator to actuate said indicator upon movement of the free end of said elongated rod means.

32. A torque wrench comprising: a handle member including a body having a chamber extending throughout substantially the full length thereof, and a grip portion extending longitudinally from said body; indicator means carried by said handle member adjacent one end of said chamber; a preassembled unit including a head member and an elongated substantially cylindrical rod means, said preassembled unit being adapted to be inserted bodily into said chamber, said head member having an enlarged portion received in said chamber and a relatively smaller portion extending exteriorly of said handle adjacent the opposite end of said chamber and adapted to be operatively connected with the work, said elongated rod means having one end thereof fixedly secured to the enlarged portion of said head member and extending lengthwise of said chamber toward said grip portion, said enlarged portion of said head member being so arranged and operatively connected with said handle member that it can turn relative to said handle member in proportion to the force applied to the work, the opposite end of said elongated rod means terminating at a point beneath said indicator means and being free and unrestrained against movement in op-

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posite directions in said chamber with respect to said handle member upon turning movement of said enlarged portion of said head member relative to said handle member; and means operatively connecting the free end of said elongated rod means with said indicator means to actuate said indicator means in response to the application of force to said handle member, said means including an operating part on said indicator means and a coupling part on the free end of said elongated rod means.

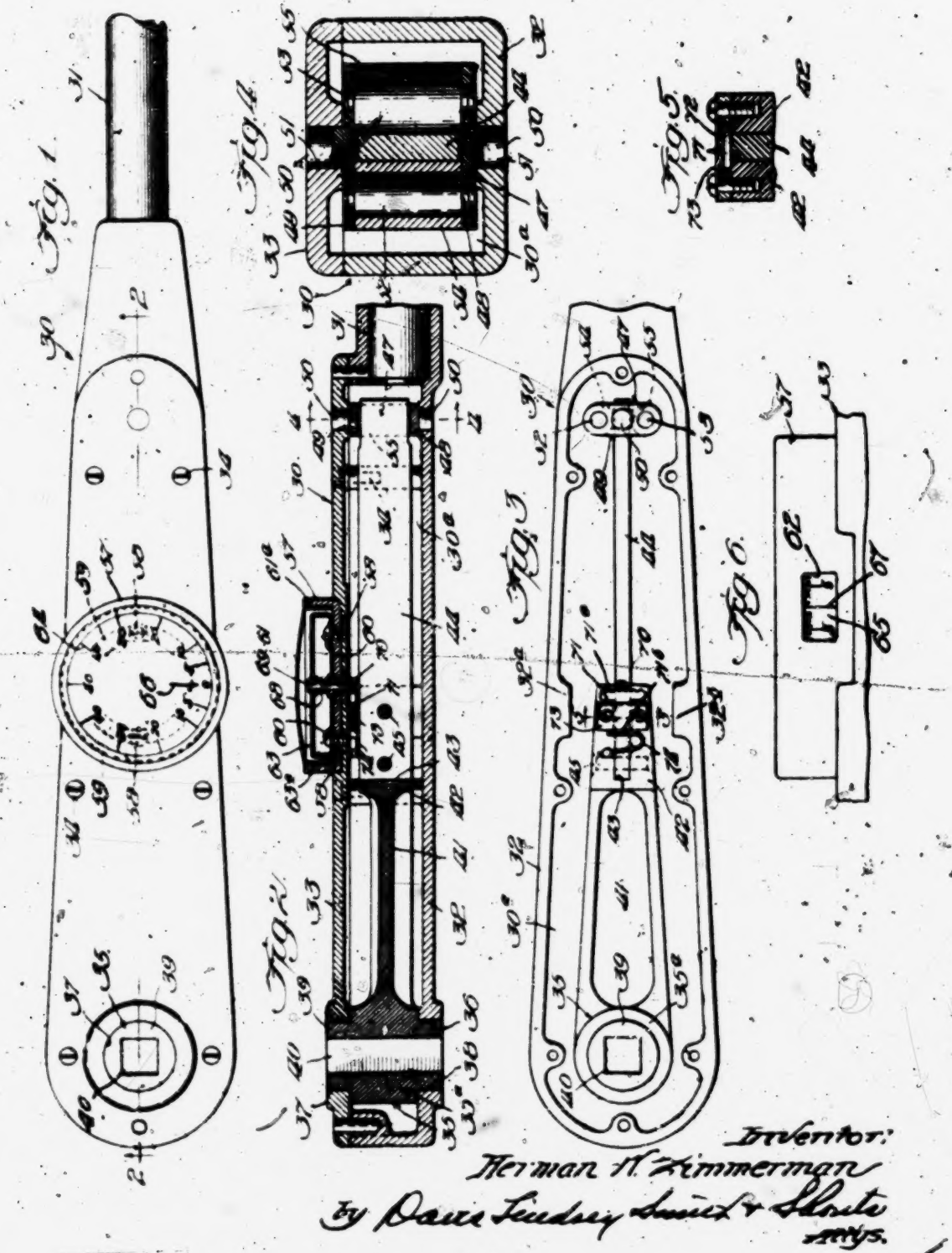
KENNETH R. LARSON.

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May 19, 1942. H. W. ZIMMERMAN 2,283,888

TORQUE MEASURING WRENCH

Filed Nov. 22, 1937 6 Sheets-Sheet 1



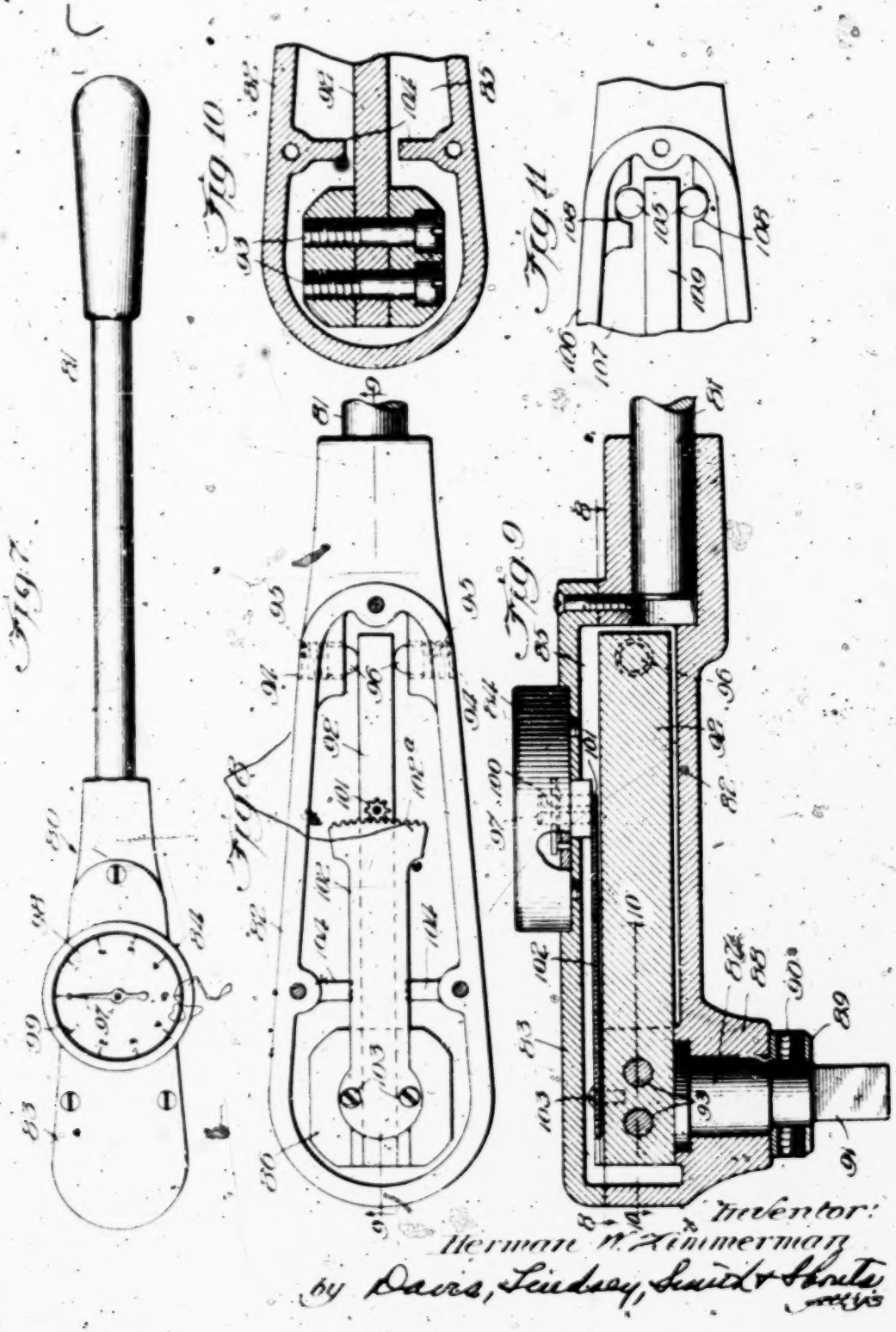
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TORQUE MEASURING WRENCH

Filed Nov. 22, 1937 6 Sheets-Sheet 2



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TORQUE MEASURING WRENCH

Filed Nov. 22, 1937 6 Sheets-Sheet 3

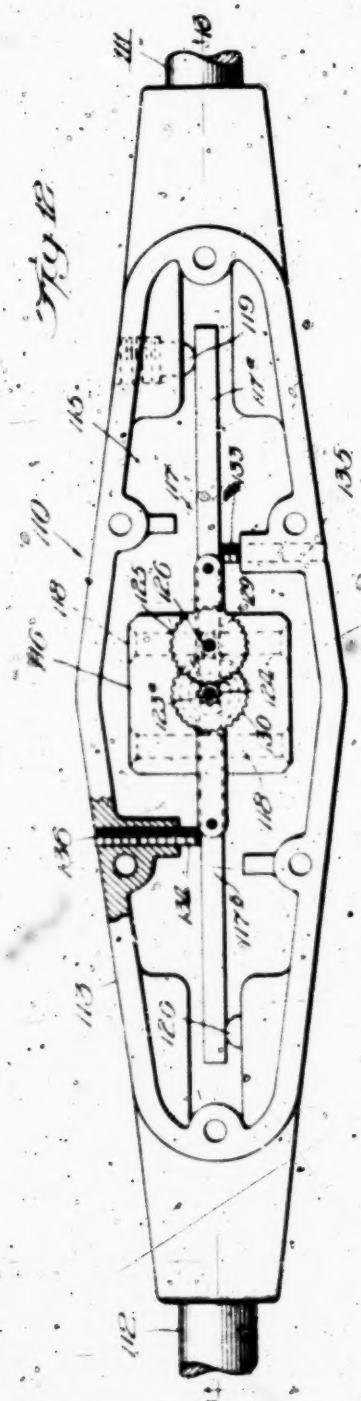


Fig. 12

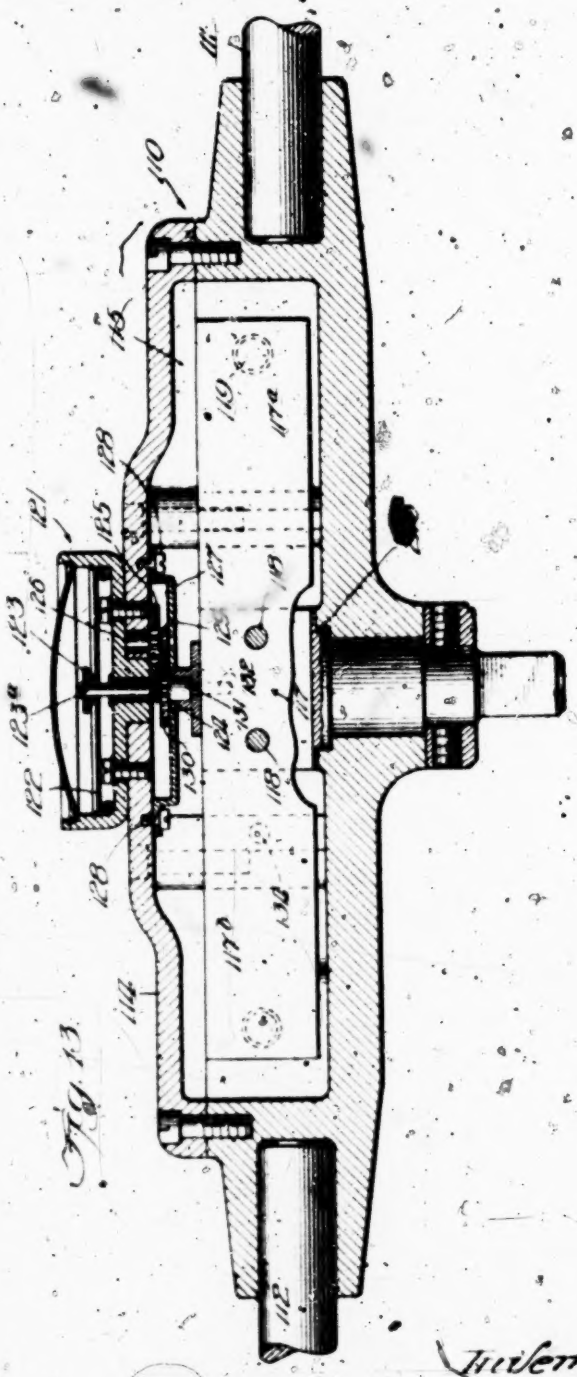


Fig. 13

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TORQUE MEASURING WRENCH

Filed Nov. 22, 1937 6 Sheets-Sheet 4

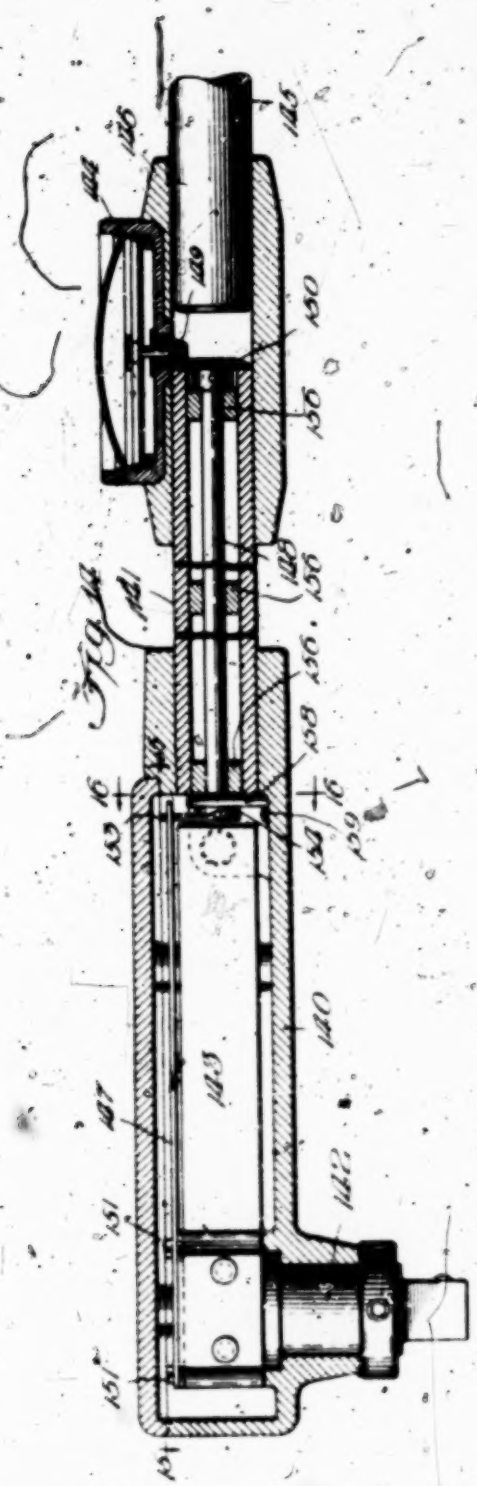


Fig. 15

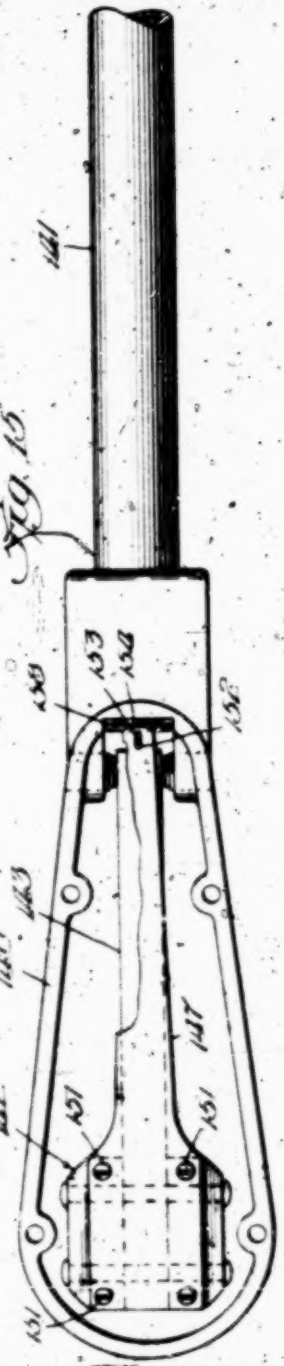
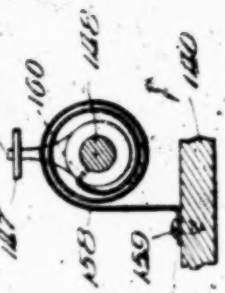


Fig. 16



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May 19, 1942. H. W. ZIMMERMAN 2,283,888

TORQUE MEASURING WRENCH

Filed Nov. 22, 1937 6 Sheets-Sheet 5

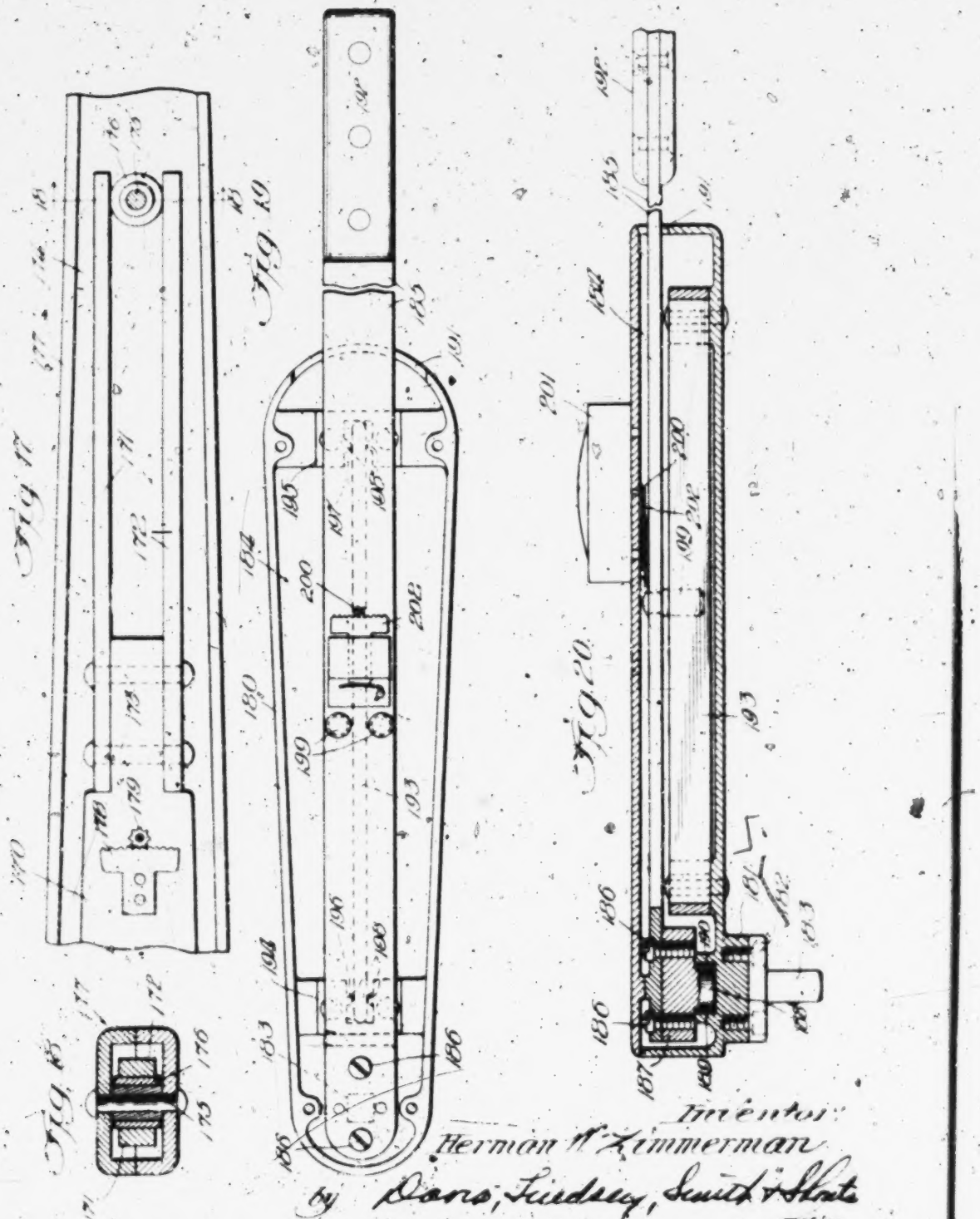


Fig. 19

Fig. 18

Fig. 20

Fig. 21

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TORQUE MEASURING WRENCH

Filed Nov. 22, 1937 6 Sheets-Sheet 6

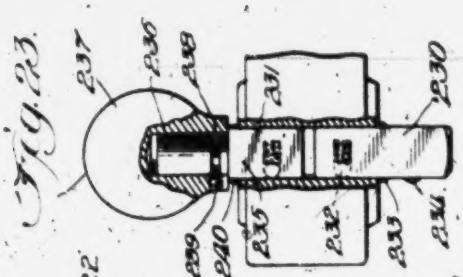


FIG. 23.

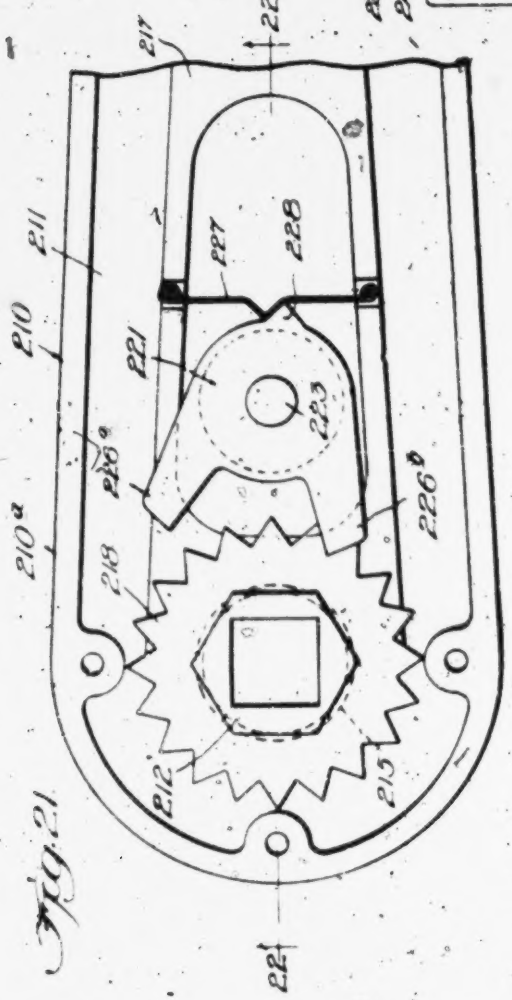


FIG. 21.

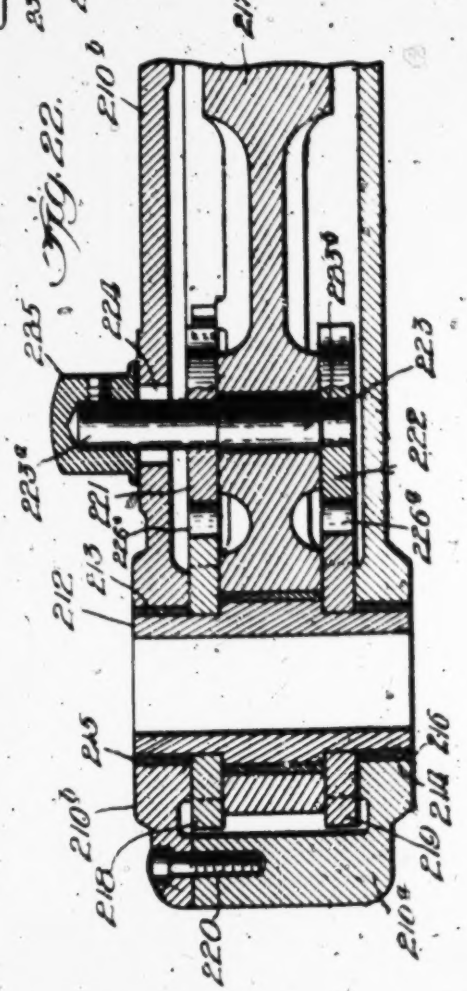


FIG. 22.

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Patented May 19, 1942

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UNITED STATES PATENT OFFICE

2,283,888

TORQUE MEASURING WRENCH

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Application November 22, 1937, Serial No. 175,863

38 Claims. (Cl. 265—1)

My invention relates to wrenches and it has to do more particularly with wrenches adapted for measuring the force or torque applied therethrough to nuts, bolts, studs, and other similar pieces of work.

My invention further has to do with a wrench embodying relatively movable members, such members being so arranged that one of them is operatively engaged with the work and relative movement between the members is yieldably opposed by spring means. In wrenches of this character, the force or torque applied through the wrench is determined by measuring the extent of relative movement between the wrench members as permitted by deflection of the opposing spring means.

The manufacture of a wrench of the foregoing kind presents various problems, one of which is inexpensive production of successive wrenches having a predetermined power rating and each of which will measure the force or torque applied to a certain piece of work in the same uniform precision manner. In other words, all wrenches of a certain power rating produced for any particular kind of work should, preferably, measure the force or torque applied in a substantially uniform manner without any appreciable variation in accuracy. I have found that this condition presents a difficult problem.

For example, coil springs have heretofore been employed for the foregoing purposes and, while they well serve their purpose in each individual wrench, they are subject to certain conditions involving the difficulties above mentioned. As is well known, it is customary in the manufacture of coil springs, and particularly those suitable for torque measuring wrenches, to first form or coil the spring from relatively soft wire and to then temper the same to the desired hardness. In this operation, a scale forms on the surface of the metal which cannot be practically removed in the formed coil spring, with the result that in a spring of this character, as it is compressed and expanded from time to time, the scale thereon tends to cause variation in accuracy of the tension of the spring. This variation tendency in different springs is not uniform. These variable conditions existing in different springs necessarily cause variation in the tensioning action of different coil springs even though they are manufactured successively under the same set of specifications. For these reasons, among others, manufacturers of coil springs do not usually guarantee the same to be accurately rated and they usually allow for a minimum percentage of error as high as 5 per cent. Spring tension variation of this extent requires very careful handling, sorting, testing and adjusting of springs that are to be used in the manufacture of precision devices like torque wrenches.

One of the objects of my invention is to provide an improved torque measuring wrench of the foregoing character which embodies spring means which is not subject to the foregoing objectionable conditions and in which the difficulties mentioned are eliminated.

Another object is to provide an improved wrench of the foregoing character which is simple in construction, is inexpensive to manufacture and to maintain in use, is of rugged and compact construction, and is adapted to measure the force or torque applied therethrough in a precision manner.

A further object is to provide a torque measuring wrench of the foregoing character wherein relative movement between the relatively movable wrench members is yieldably opposed by an elongated leaf-like spring means, which spring means is so constructed and arranged that any number of successive wrenches of the same class and power embodying the same may be manufactured with each wrench adapted to uniformly measure the force or torque applied to any particular piece of work.

An additional object is to provide an improved torque measuring wrench of the foregoing character which includes a leaf spring member formed of a high-grade steel to a predetermined size and shape and free from scale, which spring is of such character that successive similar springs may be made and assembled in the wrench with the assurance that successively made wrenches embodying the same will operate in a substantially identical manner.

Additional objects are to provide a torque measuring wrench of the foregoing character embodying precision spring means free from scale and other physical conditions that might tend to effect its deflection; to provide a torque measuring wrench of the foregoing character having spring means so constructed and arranged as to insure accuracy in the measurement of the force or torque, and which will continue to function in a highly accurate manner over long periods of time; and to provide an improved ratchet type torque measuring wrench embodying the foregoing features.

Other objects and advantages will become ap-

parent as this description progresses and by reference to the drawings wherein—

Figure 1 is a top plan view of one form of wrench embodying my invention, the outer portion of the handle portion thereof not being shown;

Fig. 2 is a vertical, longitudinal sectional view taken substantially on line 2—2 of Fig. 1;

Fig. 3 is a top plan view of the structure shown in Figs. 1 and 2 with the top cover portion thereof removed;

Fig. 4 is an enlarged section taken substantially on line 4—4 of Fig. 2;

Fig. 5 is an enlarged section taken substantially on line 5—5 of Fig. 3;

Fig. 6 is an enlarged side elevational view of the dial structure shown in Figs. 1 and 2;

Fig. 7 is a top plan view of another form of wrench embodying my invention;

Fig. 8 is an enlarged horizontal sectional view of the wrench shown in Fig. 7, which view is taken substantially on line 8—8 of Fig. 9;

Fig. 9 is a longitudinal, vertical sectional view taken substantially on line 9—9 of Fig. 8;

Fig. 10 is a horizontal sectional view taken substantially on line 10—10 of Fig. 9;

Fig. 11 is a fragmental sectional view showing a modified form of means for mounting the spring which opposes relative movement between the wrench members;

Fig. 12 is a view similar to Figs. 3 and 8, except showing a further modified form of wrench embodying my invention;

Fig. 13 is a longitudinal, vertical sectional view taken substantially on line 13—13 of Fig. 12;

Fig. 14 is a vertical, longitudinal sectional view of still another form of wrench embodying my invention;

Fig. 15 is a horizontal sectional view taken substantially on line 15—15 of Fig. 14;

Fig. 16 is a section taken substantially on line 16—16 of Fig. 14;

Fig. 17 is a fragmental sectional view of another form of wrench embodying my invention;

Fig. 18 is a section taken substantially on line 18—18 of Fig. 17;

Fig. 19 is a view similar to Figs. 3, 8 and 12, except showing a further modified form of wrench embodying my invention;

Fig. 20 is a longitudinal, vertical sectional view through the structure shown in Fig. 19;

Fig. 21 is a fragmental view of a ratchet form of wrench embodying my invention;

Fig. 22 is a section taken substantially on line 22—22 of Fig. 21; and

Fig. 23 is an elevational view, partially in section, illustrating means that may be applied to the wrenches shown in Figs. 2 and 21 for engaging the wrench with the work and also for aiding in support of the wrench upon the work during the use thereof.

The wrench shown in Figs. 1 to 6, inclusive, includes a chambered head 30 to which is connected a handle 31. The head 30 includes a body section 32 having a rather deep chamber 30a therein and a top cover section 33 secured to the body section 32 by a plurality of screws or other fastening devices 34.

The forward end of the head 30 rockably supports a work-engaging member 35. More particularly, the body and cover sections are provided with aligned openings 36 and 37 in which are received upper and lower reduced cylindrical hub-like portions 38 and 39 on the annular head 35a of the work-engaging member 35. The work-engaging member is provided with a central opening 40 of rectangular or other suitable shape to prevent rotation of the supported part, and this opening is adapted to receive any suitable work-engaging adapter (not shown) for operatively connecting the wrench with the work.

The work-engaging member 35 is further and operably connected with the tool head 30 (Figs. 2 and 3) by spring means in such a way that relative rock movement between the head and work-engaging member, when the wrench is engaged with the work and the wrench handle 31 is actuated to tighten or loosen the work, is yieldably opposed; and by measuring the extent of relative rock movement between the head 30 and work-engaging member 35, as permitted by deflection of the spring means, I determine the amount of force or torque applied to the particular piece of work in tightening or loosening the same.

More particularly, the work-engaging member 35 is provided with a rearwardly-extending webbed arms 41 which terminates in a spring attachment head portion 42 (Figs. 2 and 3) having a longitudinally extending and vertically disposed slot 43 therein. The spring means that I employ takes the form of an elongated leaf-like spring member 44 having its forward end received within the arm slot 43 and fixedly secured therein by rivets 45 or other suitable securing devices. It is to be understood that the spring member 44 may be referred to as a strip spring member and that it may take the cross-sectional shape shown or any other suitable cross-sectional shape such as square, circular, oval or the like. The rear end of the spring 44 is connected to the wrench head 30 by a support unit 47 (Figs. 2, 3 and 4) which is automatically adjustable as the spring 44 is deflected to compensate for the changed position of the deflected spring and thereby avoid abnormal distortion of the spring which, if it should occur, might create a condition causing a false registration of the torque or force being applied to the work.

The support unit 47 is located at the rear end of the wrench head chamber 30a and it is pivotally carried by these sections in such a way as to maintain at all times substantially the same alignment relation between the longitudinal center line of the spring 44 and the axis of the unit 47. Specifically, the unit 47 (Fig. 4) includes a pair of end plate members 48 and 49 each having an outwardly extending cylindrical stud 50 rotatably engaging, respectively, in openings 51 formed in the body and cover sections 32 and 33. The end plates 48, 49 are connected together in spaced relation by post members 52 and 53 around which are disposed roller sleeve members 54 and 55. The post members 52 and 53 are spaced apart to such an extent and the sleeves 54 and 55 are of such diameter as to provide a space 56 between the sleeves 54, 55 in which the rear end of the spring 44 is received.

It will be seen that in the use of the foregoing structure, with the work-engaging member 35 applied to the work and with the operator grasping the handle 31 and moving the same to tighten or loosen the work, the handle 31, the tool head 30, the work-engaging member 35 and the work will tend to move as a single unit. However, when the work offers sufficient resistance to turning movement, as when tightening the same, to overcome the initial tension of the spring 44, such spring will be deflected, permitting relative rock movement between the work-engaging member

35 and the tool head 30. As the work offers added resistance, the deflection of the spring 44 will be increased, during which time the spring 44 becomes slightly bowed. As the spring 44 is deflected and bowed, the spring connecting unit 47 will rotate in its bearings 50 to accommodate the changed angular position of the spring 44 caused by its bowing so that the end portion of the spring 44 engaged with the unit 47 will always assume substantially the same position relative to the axes of the rollers 54, 55 of the unit 47, avoiding any cramping of the deflecting spring that would tend to influence or upset its normal deflecting action.

In further carrying out my invention, I construct the strip spring member 44 in such a way as to insure its operation with a high degree of accuracy at all times. The construction of the spring member is such that, for any particular wrench having a particular rated power, any desired number of springs may be made up and, when applied to wrenches, they will all function with substantially uniform rated accuracy. To this end, I employ a spring member formed of a high-grade steel which is tempered to the desired hardness to provide the desired tension rating. The tempered spring is then ground or otherwise treated to remove all scale therefrom and to give it predetermined dimensional characteristics so that a predetermined pressure will be required to cause an initial deflection of the spring and to cause deflection of predetermined extent. By providing a strip spring member of this character I find that by mounting it in the manner described, the force or torque applied to the work may be measured in a precision manner and that manufacture of wrenches of this character in quantity is facilitated and may be carried out in an inexpensive way without sacrifice in precision requirements. For any particular wrenches of predetermined size and power rating, parts may be made up in quantity with the assurance that they may be assembled into complete wrenches that will have the desired power rating.

It will be understood that the power rating of any spring 44 may be varied by changing the cross-sectional area thereof and/or by using a spring having a greater or less active length between the work-engaging member and the unit 47. This effect may also be accomplished by varying the length of the work-engaging arm 41; but once these conditions have been established in any wrench having a particular rated power, successive wrenches may be accurately reproduced with each having a substantially uniform power rating.

The relative movement between the head 30 and the work-engaging member 35 is measured, preferably (but not necessarily) in terms of inch-pounds pressure applied, by indicating mechanism which will now be described. Specifically, I employ a detachable indicator unit which includes a cup-shaped casing 57 (Figs. 1 and 2) having its bottom part secured to the cover section 33 by a pair of diametrically opposed screws 58. The openings through which the screws 58 extend take the form of elongated arcuate slots 60 that permit substantial rotation of casing 57, which rotation is tensioned by spring washers 59 disposed between the heads of the screws 58 and the adjacent wall of the casing 57. The casing 57 is provided with an inverted, cup-shaped, transparent cover 61, having a skirt portion 61a snugly fitting against the inner part of the side wall of the casing 57. The side wall of the casing 57 is provided with a circumferentially extending slot 62 (Fig. 6) which is covered by the transparent cover side wall 61a, for a purpose which will be referred to more particularly hereinafter.

The indicator unit further includes an inverted cup-shaped dial drum 63 (Fig. 2), the side wall 63a of which extends in substantially parallel relation to the side walls of the casing 57 and cover 61. The top of the dial drum 63 is provided with a graduated scale 64 and the side wall of the drum is provided with a corresponding scale 65. The top of the transparent cover 61 has an indicating mark 66 and the skirt 61a of the transparent cover at the center of casing slot 62 is provided with a corresponding indicating mark 67. With the foregoing construction, the casing 57 and cover 61 may be set as a unit so that the indicating marks 66 and 67 coincide with any desired mark (zero, for example) on the dial scales 64 and 65, respectively; and, by rotating the dial 61 in either direction, the extent of relative movement of head 30 and member 35 and the pressure applied through these members to the work will be indicated by the extent of movement of the dial scales relative to the indicating marks 66 and 67.

The dial drum 63 is carried by a tubular shaft element 68 which extends downwardly through the central boss-like portion of the bottom part of the casing 57 and it fixedly receives a shaft 69 extending into the head chamber 30a where it receives a pinion 70 which is operatively engaged with a rack member 71 carried by the work-engaging member arm 41.

The rack member 71 is provided with a squared and toothed rack portion 71a which directly engages the pinion 70, and this rack member is supported for longitudinal adjusting movement to accommodate the arcuate movement of its supporting arm 41 when relative rock movement takes place between the head 30 and work-engaging member 35. Specifically, the rack member is of T-shape and its T-stem portion 71b is snugly and slidably received in a slideway 72 formed by a recess in a cross plate 73 supported by the upper rear end portion of the work-engaging member arm 41. The rear end of the rack member stem 71b is engaged by a U-shaped spring 74 carried by the arm 41, which spring is so constructed and arranged as to continuously urge the rack member forwardly into engagement with the pinion 70 but will permit the rack member to be moved backwardly and forwardly to accommodate the arcuate movement of the rack member above mentioned. With this arrangement, as soon as the work offers sufficient resistance to overcome the initial tension of the spring 44, such spring will be deflected and the head member 30 will rock relatively to the work-engaging member 35 and its arm 41, thereby moving the indicating unit 57 and its pinion 70 relative to the rack member 71 and causing the dial drum 63 to rotate. The extent of rotation of the dial drum and the amount of pressure applied to effect such rotation may be accurately determined by noting the extent of movement of the dial scales relative to the indicating marks 66 and 67. At times, the operator, when actuating the wrench, may be in such a position that the dial scale 64 is within his vision while, at other times, the dial scale 65, at the side of the dial drum, may be within his vision. In either event,

he can readily determine the dial scale reading and the amount of pressure applied.

It will be appreciated that there is a safe limit to the extent of deflection of the spring 44. To avoid over-deflection of such spring and, in turn, probable detrimental distortion of the same which might affect accuracy of the wrench, inwardly-extending stop lugs 32a and 32b of equal length are provided on opposite side walls of the head chamber 30a adjacent the rear end of the arm 41. The forward end of the arm 41 will abut against the stops 32a and 32b upon a predetermined, relative rotational movement between the head 30 and work-engaging member 35. These lugs 32a and 32b are of such length that they stop further relative rotational movement of the parts when the safe deflection limit of the spring is reached or is nearly reached. Of course, the stop lugs 32a and 32b may be of any desired length to limit the deflection of the spring 44 to any desired extent.

Wrenches embodying my invention may take various forms, and in Figs. 7 to 10, inclusive, I have shown another form which may well serve my purpose in taking care of certain kinds of work. Specifically, this wrench includes a head 80 having a handle 81 thereon. The head 80 includes a bottom chamber section 82 and a removable top cover section 83 which supports an indicating unit 84. The head sections provide a head chamber 85 in which I rockably mount a work-engaging member 86. The work-engaging member is provided with a stepped stub shaft portion 87 which finds suitable bearing in a thickened forward portion or boss 88 in the bottom section 82, and this shaft is of sufficient length to extend below the boss 88 where it receives a collar 89 secured thereto by lock screws 90, whereby the shaft and the work-engaging element 86 are fixedly secured in place for rock movement. The outward projecting end of the shaft 87 is provided with a shank or other suitable means 91 for direct engagement with the work or for reception of suitable adapter means which may be engaged with the work, as determined by the character of the work to be tightened or loosened.

The work-engaging member is slotted to receive one end of a strip spring member 92 similar to the previously described spring 44 and which spring is secured in place by screw members 93. The spring 92 extends rearwardly within the head chamber 85 and its rear end is operably connected with the head 80 by adjustable abutment means. More particularly, the head 80 near the rear end of the chamber 85 is provided in its sides with aligned threaded openings 94 in which are received abutment members having a threaded shank 95 and a rounded abutment head 96 projecting into the head chamber. The spring 92 extends rearwardly between the abutment members and such members are adjusted inwardly, preferably to similar extents, substantially into engagement with the side faces of the spring 92 so that when the wrench handle 81 is grasped and rotated in either direction the pressure applied will be transmitted through the head 80, the spring 92 and the work-engaging member 86 to the work.

As in the first-described form, when the work offers sufficient resistance to overcome the initial tension of spring 92, relative rock movement takes place between the head 80 and work-engaging member 86, and by measuring the extent of this movement one may determine, through the indicating unit 84, the amount of pressure applied. The indicating unit 84 may include a hand 97 movable relative to a dial 98 having a scale 99 thereon calibrated to register, preferably (but not necessarily), inch-pounds pressure. The hand 97 is connected through suitable shaft means 100 to a pinion 101 which is operably connected to the work-engaging member 86. More particularly, the work-engaging member 86 is connected to the pinion 101 by an arm 102, the forward end of which is fixedly secured to the work-engaging members by screws or other suitable fastening devices 103. The rear end of the arm 102 is provided with a rack portion 102a which engages the pinion 101; and, with this arrangement, when the work offers sufficient resistance to cause deflection of the spring 92 and relative movement of the head 80, as when tightening the work, such movement of the head and pinion 101 relative to the rack portion 102a will cause the gage hand 97 to rotate relative to the dial scale and register the extent of this movement in terms of pressure applied.

The side walls of the bottom section 82 of the head are provided with stop lugs 104 which are adapted to engage the opposite faces of the spring 92 upon a predetermined relative rotational movement between the parts, thereby limiting the extent of deflection of the spring 92 within safe operating limits. This arrangement is substantially the same as the spring stop arrangement of the first-described form, except that the stop members here engage the spring instead of the work-engaging member.

In order to lessen the tendency of the abutment elements 96 to cramp the spring 92, the spring-contacting portions of these abutments are rounded as shown in Fig. 8. However, if desired, rollers 105 may be substituted for the abutment elements 96, as shown in Fig. 11. More particularly, the casing head 106 (Fig. 11) is provided with a chamber 107, similar to the chamber 85, and the rear portion of the wall of this chamber is provided with a pair of vertical and arcuate-shaped roller seats 108 in which the rollers 105 are received. These rollers are of such diameter and the seats 108 are spaced apart to such an extent that the rear end of the strip spring 109 is snugly received therebetween. The roller action between the spring and rollers will tend to minimize the tendency to cramp the spring 109 and abnormally distort the same.

My invention is also adaptable to so-called double-handle wrenches, or wrenches having two oppositely extending handles adapted to be grasped by the hands of a single operator or by different operators. To this end, I may employ a structure similar to that shown in Figs. 12 and 13, which includes a wrench head 110 having aligned handles 111 and 112 extending from the opposite ends thereof.

The wrench head 110 (Figs. 12 and 13) is formed of a chambered bottom section 113 and a top section 114 providing a head chamber 115. Within the chamber 115, and preferably midway between the handles 111, 112, I employ a work-engaging member 116 similar in construction and mounting to the work-engaging member 86 of the second-described form. The work-engaging member 116 is provided with a cross slot in which is secured a strip spring 117. The spring 117 is of sufficient length to extend substantially throughout the length of the head chamber 115 and its mid-portion is secured in the work-engaging member slot by suitable rivets or other fastening devices 118. In this way, strip spring

arms or elements 117ª and 117ᵇ, of substantially equal length, extend in opposite directions from the work-engaging member 116. If desired, the strip spring arms may take the form of separate spring members having their adjacent ends rigidly carried by the work-engaging member 116.

The free ends of the spring arms 117ª and 117ᵇ are operably connected with the head 110 by rounded abutment elements 119 and 120 disposed on the opposite side walls of the head so that when the handles 111 and 112 are grasped and rotated in clockwise direction (as viewed in Fig. 12), as in tightening the work, both spring arms 117ª and 117ᵇ will be effective to yieldably oppose relative rotation between the head 110 and work-engaging member 116.

In the use of this structure, as with the previously described structures, when the work offers sufficient resistance to overcome the initial tension of the spring arms 117ª and 117ᵇ, head 110 will rotate clockwise relative to the work-engaging member and, by measuring the extent of this movement, one may determine the amount of pressure applied. This measurment may be accomplished by an indicating unit 121 similar to the indicating unit of the first-described form, except that a stationary dial 122 and a rotatable hand 123 are employed instead of the drum dial structure 63.

The rotatable hand 123 (Fig. 13) which corresponds to the hand 97 (Fig. 7) is carried by a rotatable shaft 124 which extends into the head chamber 115 where it receives a pinion 124. The pinion 124 meshes with a larger gear 125 supported by a shaft 126, the opposite ends of which are journaled in the cover section 114 and in a cross-supporting bracket 127 secured to the under side of the section 114 by screws 128. The shaft 126 carries another small gear 129 which meshes with a larger gear 130 having a hub portion 131 detachably secured to the upper portion of the work-engaging member by a pair of spaced pins 132 (only one shown in Fig. 13). With this arrangement, as relative rotational movement takes place between the head 110 and the work-engaging member 116, the movement of the gear 129 relative to the gear 130 transmits motion to the hand 123 through the gears 125 and 124. The dial 122 is provided with a scale (not shown) similar to the scale 99 (Fig. 7) calibrated, preferably, in terms of inch-pounds pressure, and by reading the extent of movement of the hand 123 relative to the dial scale, the operator may determine the amount of pressure applied.

The wrench structure shown in Fig. 12 is adapted particularly for measuring the pressure applied in tightening the work. To adapt the wrench for operation as a substantially rigid structure when loosening the work, I provide adjustable abutment screws 133 and 134 in the opposite side walls of the bottom head section 113, which screws are opposed to the abutment elements 119 and 120. The screws 133 and 134 may be adjusted into light engagement with the spring arms 117ª and 117ᵇ, respectively, or they may be slightly spaced therefrom, as desired. In either event, they are locked in the desired position by the lock screws 135 and 136. The screws 133 and 134 may serve, when adjusted into contact with the spring arms 117ª, 117ᵇ, as initial tension adjustment means. It will be seen that by setting up these screws against the spring arms to any desired extent, the initial tension of the spring arms may be increased so that a greater initial pressure will be required to deflect the same. This feature may serve for compensating purposes, as, for example, slight wear of the parts may take place over a long period of use and the gage mechanism may for this reason fail to register accurately. By setting up the screws 133 and 134, any out-of-register condition, and particularly an initial register condition, may be corrected. So far as the loosening action is concerned, it will be seen that when the wrench handles are moved in a counterclockwise direction, the head 110 and screws 133, 134 contact the spring arms 117ª, 117ᵇ in close proximity to the work-engaging member 116 so that the loosening pressure may be applied through a substantially rigid series of connections. It will be understood that, so far as the foregoing tensioning feature is concerned, it may well be applied to any of the wrench forms disclosed herein.

In certain instances it may be desirable to employ wrenches having long handles, and where the work acted upon is at a considerable distance away from the operator so that he cannot readily observe the indicating mechanism when it is located as shown in the previous forms. To take care of this condition, in the use of my invention, I may employ the structure shown in Figs. 14 to 16, inclusive. This structure includes a head 140 and an elongated hollow handle 141. The head 140, the work-engaging member 142 and strip spring 143 of this form are substantially identical with the form of Fig. 8 and it will not, therefore, be necessary to describe these parts and their mountings in detail.

Relative rock movement between the head 140 and work-engaging member 142 is measured by an indicating unit 144 which is substantially the same as the indicating units of the forms of Figs. 8 and 13, except that this unit is located remotely from the work-engaging member 142 and in close proximity to a handle portion 145 that may be grasped by the operator. The unit 144 is provided with a tubular body portion 146 which receives the rear end of the forward handle portion 141 and the forward end of the rear handle portion 145, thereby coupling these handle portions together as a unit.

Relative rock movement of the parts is transmitted to the indicating unit 144 by transmission mechanism which will now be described. This transmission mechanism includes a flat arm 147 mounted within the head 140 and a shaft 148 connected to an indicator pinion 149 by a gear 150. The forward end of the arm 147 is fixedly secured to the work-engaging member 142 by screws or other suitable fastening devices 151. This arm extends rearwardly slightly past the rear end of the spring 143 and it is provided with a longitudinally extending elongated slot 152 in which is received an upstanding arm 153 on a head member 154 secured to the forwardly extending end of the shaft 148. The shaft is rotatably supported by suitable bearing members 156 mounted within the hollow handle portion 141.

In the use of this structure, as relative rock movement between the parts takes place, as for example when tightening the work, the movement of the head 140 and handle portions 141 and 145 causes a counterclockwise movement of the shaft 148 (as viewed from the front end of the wrench), in turn rotating the gears 150 and 149 so as to move the gage hand 157 in a clockwise direction. When the wrench is released and the parts are returned to normal position, the

reverse movement of the parts takes place. Backlash in both of these movements is guarded against by a clock-type spring 158 (Fig. 16) having one end secured by a screw 159 to the bottom section of the wrench head, the same extending spirally around the shaft head 154 and being connected to such head as at 160. This spring tensions the movement of the shaft in such a way as to cause it to move with a smooth action, thereby insuring a more positive and accurate indication by the indicating unit.

In certain instances, I may employ a pair of separate, independently acting strip spring members for measuring the pressure applied in both tightening and loosening the work. Such an arrangement is shown in Figs. 17 and 18. Referring particularly to Fig. 17, the structure shown is similar to that of Figs. 1 and 2 except that the rear end of the work-engaging member arm 170 is shaped to provide a reduced tongue to which the forwardly extending ends of similar strip spring members 171 and 172 are secured in oppositely facing relation by rivets or other suitable fastening devices 173. The rear end portion of the head chamber 174 is provided with an upright post member 175 around which is disposed a sleeve unit 176 that provides a roller abutment mounting for the rear ends of the spring members 171 and 172. That is to say, the spring members 171 and 172 are long enough to extend rearwardly slightly past the roller unit 176, and they are spaced apart to such an extent that their adjacent faces snugly engage the roller unit 176. With this arrangement, as the work is tightened and the head 177 rotates relatively to the work-engaging arm 170, the spring member 172 is operative to yieldingly oppose this movement. When the work is loosened, the other spring member 171 becomes operative in opposing relative movement of the parts. Relative movement of the parts may be measured by any suitable indicating mechanism, such, for example, as any of those previously described. The indicating structure may include a rack member 178 engaged with a pinion 179 adapted to be carried by an indicating unit connected to an indicator of any suitable kind as, for example, the drum dial 83 of Fig. 2 or the gage hand 97 of Fig. 7.

My invention is also well adapted to an arrangement wherein the wrench head portion is adapted to be non-rotatably secured to the work, and the handle part which the operator grasps is, on the other hand, rotatable relative to the work. In Figs. 19 and 20 I show a wrench of this character which includes a chambered head 180 having, on the lower side of its forward end, a thickened boss portion 181 to the bottom of which is detachably secured, by screws or other fastening devices 182, a work-engaging adapter member 183. Within the chamber 184 of the head I rotatably or rockably mount a handle member 185. More particularly, the forward end of the handle 185 is detachably secured, by screws or the like 186, to a supporting member 187 having a depending stub shaft portion 188 rotatably mounted in an annular opening 189 formed in the inner wall of the thickened boss 181. An anti-friction bearing member 190 is associated with the stub shaft 188 for a purpose which will be obvious.

The handle 185 extends throughout the head chamber 184 and projects rearwardly therebeyond through an elongated slot 191 formed in the rear end of the head 180. The outwardly projecting end of the handle is provided with a grip portion 192 which facilitates use of the structure.

Relative rotation or rock movement between the head 180 and handle 185 is yieldingly opposed by a strip spring member 193 carried by the head 180. To this end, spring supporting block members 194 and 195 are mounted within and adjacent the opposite ends of the head chamber 184 and they are provided with facing slots 196 and 197 in which the opposite ends of the strip spring member 193 are freely received. The opposite side walls of the slots are provided with abutment elements 198 which have substantially point-contact engagement with the adjacent surfaces of the strip spring 193, thereby minimizing frictional contact between these parts. The handle 185 is disposed above the spring 193 and it is provided, adjacent the mid portion of the spring 193, with laterally-spaced depending pins 199 which are adapted to engage the spring 193 on the opposite sides thereof. In this way the tendency of the handle 185 to rotate relatively to the head is yieldingly opposed by the spring 193 but, when the work offers sufficient resistance to overcome the initial tension of such spring, the spring will be deflected and deflection will take place to an extent dependent upon the amount of pressure applied.

By measuring the extent of this deflection, I determine the amount of pressure, preferably inch-pounds, applied through the handle and spring to the work. The mechanism for measuring this deflection may take the form of indicating mechanism like that shown in Fig. 3, including a pinion 200 supported by a head-carried gage device 201 and a yieldable, shiftable rack member 202 carried by the handle 185. Other than above stated, the operation of this form of wrench is substantially the same as the forms previously described.

In taking care of various kinds of work, it is desirable to employ a ratchet form of wrench structure. My invention is well adapted to a wrench of that character, by so constructing the ratchet mechanism that wear thereof is minimized and any distortion thereof which would cause inaccurate reading of the gage structure is avoided. In Figs. 21 and 22, I have shown one form of torque measuring ratchet wrench in which the foregoing objectionable conditions are avoided, and which is adapted to operate with a ratchet action while, at the same time, measuring the force or torque applied in a highly efficient and accurate manner. More particularly, referring to Figs. 21 and 22, I employ a head part 210 which may be similar to the heads of the wrenches shown in Figs. 1 to 18, inclusive, and which is provided at its rear with a handle (not shown) adapted to be grasped by the operator. Within the wrench head chamber 211 I rotatably mount a work-engaging member 212 with which is associated ratchet mechanism. More particularly, the body and cover portions 210a and 210b of the wrench body, at the forward end thereof, are provided with aligned openings 213, 214 in which the opposite reduced end portions of the work-engaging member 212 are rotatably received. For friction-reducing purposes, the opposite ends of the work-engaging member 212 are engaged with the body by anti-friction bearing members 215 and 216. Upon the central and enlarged portion of the work-engaging member 212 I rotatably mount an arm 217 which may be constructed similarly to the arm shown in Figs. 2 and 3. The rear

end of this arm is connected with a strip spring member (not shown) which is, in turn, connected with the body 210 in any of the ways shown in Figs. 1 to 18, inclusive, so that relative rotational or rock movement between the body 210 and the arm 217 is yieldingly opposed by said spring member.

The arm 217 is operably connected to the work-engaging member 212 by a ratchet mechanism which will now be described.

Similar ratchet wheels 218 and 219 are mounted upon the reduced end portions of the work-engaging member at the opposite ends of the enlarged central portion of such member. The ratchet wheels each have a polygonally shaped central opening and the portion of the work-engaging member engaged thereby may be complementally shaped so that the ratchet wheels are non-rotatably fixed upon the work-engaging member 212. The arrangement of these parts is such that when the body cover, the work-engaging member, arm 217 and ratchet wheels are assembled in the manner shown in Fig. 22 and they are secured in that position by one or more cover screws 220, the parts are operatively assembled so that the ratchet wheels rotate with the work-engaging member.

The ratchet mechanism further includes a pair of double pawl members 221, 222 carried by the arm 217, which serve to operatively connect such arm with the work-engaging member. More particularly, a shaft 223 is rotatably mounted in the arm 217 and has reduced end portions 223ª and 223ᵇ projecting above and below such arm. Upon the reduced end portions 223ª and 223ᵇ of the shaft 223, and in guide-abutment engagement with the upper and lower sides of the arm 217, I fixedly secure the pawl members 221 and 222. The end 223ª of the shaft 223 extends upwardly and through an elongated opening 224ª in the head cover 210ᵇ where it receives a finger-piece 225 which may be grasped and actuated to properly set the pawl members 221 and 222, as will be mentioned more particularly hereinafter.

Each pawl member 221, 222 has a pair of similar pawl elements 226ª and 226ᵇ which project forwardly so that in certain adjusted positions thereof they will, respectively, engage the teeth of the ratchet wheels 218 and 219. The pawl members 221, 222 are moved simultaneously to similar extents by adjustment of the shaft 223 and when these members are rotated to the position shown in Fig. 1, the pawl element 226ᵇ is thrown into engagement with the ratchet wheels. The pawl members are held in the position shown by the upper and lower laterally directed leaf spring members 227 which have V-shaped mid portions that are engaged by similarly-shaped projections 228 on the adjacent peripheral surfaces of the pawl members. Such spring members yieldably hold the pawl members in the position, for example, shown in Fig. 21; however, if it is desired to reverse the pawl action so that the pawl elements 226ª are operatively engaged with the ratchet wheels, it is only necessary to grasp the finger-piece 225 and rotate the same in counterclockwise direction (as viewed in Fig. 21) to snap the pawl member projections 228 on the side of the V-shaped spring portions opposite that shown in Fig. 21.

In the use of the ratchet structure shown, with the pawl element 226ᵇ engaged with the ratchet wheel, the arm 217 and work-engaging member 212 are operatively connected as a rigid unit when the wrench is moved in a clockwise direction (as viewed in Fig. 21) to tighten the work. When the wrench is moved in the opposite direction, with the parts so set, the ratchet wheels 218 and 219 will remain stationary and the pawl elements 226ᵇ, through the yielding connection afforded by the springs 227, will slip in counterclockwise direction over the teeth of the ratchet wheels. In this way, an ordinary ratchet action is accomplished in tightening or moving the work in a clockwise direction. The same operation takes place when the ratchet members 221, 222 are adjusted, as above stated, to operatively engage the pawl elements 226ª for operative action in the reverse direction. Other than above mentioned, the construction and operation of this form of wrench may be similar to any of the forms shown in Figs. 1 to 18, inclusive.

The wrench as shown in Figs. 2 and 22 may be connected to the work through a work-adapter member such as the member 230 shown in Fig. 23. To this end, the work-engaging member 231 is provided with a rectangular, or other non-circular opening, and the upper or inner end of the work-adapter member 230 is similarly shaped. This part of the member 230 may be provided with a spring and ball friction attachment 232 to prevent the adapter member from accidentally becoming detached. Such adapter may also be provided with stop lips or lugs 233 for preventing the adapter from being inserted too far within the work-engaging member opening. The lower projecting portion of the work-adapter member 230 may also be provided with a spring and ball attachment connection 234 so that a socket or other work-engaging element may be firmly held in place thereon.

At times, the operator may wish to rest his hand upon the forward part of the wrench to steady his movements in tightening the work. In that case, I may employ the hand-supporting structure shown in Fig. 23. Specifically, the upper end of the work-engaging member opening receives a hand supporting unit having a shank portion 235 constructed similarly to the upper or inward end of the work-adapter member 230. The shank portion 235 projects outwardly above the wrench structure as at 236 and is, preferably, of cylindrical shape for rotatable reception of the ball-like hand-grip member 237. The cylindrical extension 236, inwardly from the end thereof, is provided with a groove 238 for the reception of a stud 239 carried by the grip member 237, whereby the grip member is rotatably fixed against outward displacement upon the cylindrical extension 236. The extent of insertion of the shank 235 within the work-engaging member opening is limited by stop lugs or the like 240 similar to the stop lugs 233.

I believe that the operation and advantages of my invention as above first stated will be readily understood from the foregoing description. It is to be further understood that while I have shown and described several forms of wrenches embodying my invention, other changes in details and arrangements of parts may be resorted to without departing from the spirit and scope of my invention as defined by the claims that follow. For example, in a two-spring construction like that shown in Figs. 17 and 18, the springs may be fixedly carried in laterally spaced relation by the wrench head and their free ends may frictionally and freely engage the opposite sides of the end

of an arm corresponding to the arm 170 (Fig. 17). Also, this same arrangement may be employed where a single strip spring member is used; in which case, the rear end of the strip spring member would be fixedly carried by the wrench head and its other or forward end would be freely and frictionally engaged with the rear end of the work-engaging member arm. In other words, the connections of the spring 44 shown in Figs. 2 and 3 may be reversed so that the spring is fixedly connected at one end to the head instead of to the work-engaging member arm.

I claim:

1. A torque measuring wrench comprising a head member having a chamber therein, a work-engaging member rockably mounted in said chamber and having an exposed part adapted for engagement with the work, a normally straight and stiff strip spring member mounted in said chamber and having one end connected to said work-engaging member, means mounted in said chamber having slidable engagement with opposite side portions of said spring member and connecting the other end of said spring member with said head member so that right and left hand threaded work may be tightened, pressure indicating means, and means between said indicating means and said work-engaging member for actuating the former as said head and work-engaging members rock relatively.

2. A torque measuring wrench comprising a head member, a work-engaging member rockably supported there . a strip spring member, means for connecting one end of said spring member to said work-engaging member, a support for the other end of said spring member having a swivel connection with said head member to accommodate flexing action and reciprocation of said spring member as said head and work-engaging members are rocked relatively, and means for indicating the pressure applied to the work through said members.

3. A torque measuring wrench comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for rigidly connecting one end of said spring member to said work-engaging member, a roller support for the other end of said spring member having a swivel connection with said head member to accommodate flexing action of said spring member as said head and work-engaging members are rocked relatively, and means for indicating the pressure applied to the work through said members.

4. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for connecting one end of said strip member to said work-engaging member, and abutment connection means between the other end of said spring member and said head member, including a pair of rollers between which said other end of said spring member is received, means supporting said roller members as a unit and for rotatively connecting such unit to said head member.

5. A torque measuring wrench comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for connecting one end of said spring member to said work-engaging member, a pivotal support for the other end of said spring member carried by said head member, said support confining said end of said spring member against lateral displacement, and means for indicating pressure applied to the work by registering the extent of relative rock movement of said head and work-engaging members.

6. A torque measuring wrench comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for connecting one end of said spring member to said work-engaging member, an abutment roller support for the other end of said spring member, comprising a pair of spaced roller members carried by said head member and between which the adjacent end of said spring member is freely received, and means for indicating pressure applied to the work by registering extent of relative rock movement of said head and work-engaging members.

7. A torque measuring wrench comprising a head member having a chamber therein, a work-engaging member rockably mounted in one end of said chamber and having an arm extending rearwardly toward the other end of said chamber, the rock axis of said work-engaging member coinciding with the axis of rotation of the work, a normally straight spring bar rigidly connected at one end to and extending lineally from the rear end of said arm and connected at its other end to said head member to yieldably oppose relative rock movement between said head and work-engaging member, and indicating means associated with said arm and head member and operated by said arm for registering the extent of relative rock movement between said head and work-engaging members.

8. A torque measuring wrench comprising a head member, a work-engaging member rockably connected thereto, a long normally straight spring bar connected at one end to said work-engaging member, means engaging opposite sides of said spring bar and connecting its other end to said head member, whereby said spring bar yieldably opposes relative rock movement of said members in opposite directions, stop means for limiting the extent of relative rock movement between said head and work-engaging members and also the extent of deflection of said spring bar, and indicating means for registering the extent of said relative rock movement.

9. A wrench for applying torque in opposite directions comprising a head member, a work-engaging member rockably connected thereto, a long and normally straight spring bar, means rigidly connecting one end of said spring bar to one of said members, adjustable abutment means carried by the other of said members and engaging opposite side portions of said spring bar and operatively connecting said spring bar with said other member, and indicating means for registering the extent of relative rock movement between said head and work-engaging members in either direction.

10. A torque measuring wrench comprising a head member having provision for operably engaging it with the work, a handle member rockably connected to said head member, a strip spring member carried by said head member in such a manner that its mid portion is free to flex, and means operably connecting said handle member to said midportion so that said spring member yieldably opposes relative rock movement between said head and handle members.

11. A torque measuring wrench comprising a hollow head member having an elongated slot in its rear wall and also having provision for operably engaging it with the work, a handle

member projecting through said slot into said head member, means in said head member whereby said handle member is rockably connected to said head member, a strip spring member carried within said head member in such a manner that its midportion is free to flex, means within said head member operably connecting said handle member to said midportion so that said spring member yieldably opposes relative rock movement between said head and handle members, and means indicating extent of relative rock movement of said head and handle members.

12. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member having a grip portion adjacent one end thereof, a work-engaging member pivotally connected with the other end of said handle member, said work engaging member having means through which it may be connected with the work, which means is located substantially on the pivotal axis of said work-engaging member, and a normally straight spring bar carried by said work-engaging member, and extending away from and in substantially radial alignment with the said work-engaging member, said spring bar being positioned between the axis of said pivot and said grip portion, said handle member having means engaging said spring bar at a predetermined distance from the axis of rotation of said work-engaging means and at a point between said work-engaging means and said grip portion to provide a substantially constant moment arm, whereby when a rotary force is applied to said grip member the same will be transmitted through said handle member to said spring bar and through said spring bar to said work-engaging member.

13. A torque measuring wrench adapted for use with means for indicating the force applied to the work, which comprises a handle member having a grip portion on one end thereof, a work-engaging member having an element thereon which is adapted to be connected to the work, said work-engaging member having a portion pivotally connected to the other end of said handle member, substantially on the axis of said work-engaging element, a spring bar supported by one of said members in end to end alignment with said pivotally connected portion and said grip portion, which said spring bar is held against longitudinal displacement relative to said one member, a connection between the other of said members and said spring bar, said connection permitting slight longitudinal displacement of said spring bar, whereby relative rotation between said members causes deflection of said spring bar and there is provided a constant moment arm through which force is applied from said grip portion through said handle member, thence through said spring bar, and finally through said work-engaging member to the work.

14. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member having a longitudinally extending grip portion adjacent one end thereof, a work engaging member pivotally supported adjacent the other end of said handle, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, a normally straight spring bar disposed in radially aligned end to end relation to said grip portion and said work engaging member, said spring bar having one end connected to said work engaging member with its other end slidably connected with said handle member at a point radially inwardly of said grip portion, whereby there is provided a constant moment arm and pressure applied to said grip portion is transmitted to the work through said handle member, thence forwardly through said spring bar and finally through said work engaging member.

15. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member having a longitudinally extending grip portion adjacent one end thereof, a work engaging member pivotally supported adjacent the other end of said handle, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, a normally straight spring bar disposed in radially aligned end to end relation to said grip portion and said work engaging member, said spring bar having one end thereof fixably connected to one of said members and its other end engaged with the other of said members, whereby there is provided a constant moment arm and pressure applied to said grip portion is transmitted to the work through said handle member, thence forwardly through said spring bar and finally through said work engaging member.

16. A torque measuring wrench which comprises a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, an arm on said work-engaging member and extending longitudinally of said handle member, a spring bar having one end carried by said arm and extending longitudinally along said handle member, said arm and spring bar constituting a continuous moment arm of substantially constant length, means for connecting the other end of said spring bar with said handle member, means for registering deflection of said spring bar to indicate force applied to the work including relatively movable elements, and means carried by said moment arm and adapted to cooperate with one of said relatively movable elements of said indicating means to operate the latter.

17. A torque measuring wrench which comprises, a handle member having a grip portion, a work-engaging member pivotally supported adjacent one end of said handle, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, an arm member on said work-engaging member and extending longitudinally of said handle member, a spring bar extending from said arm longitudinally of said handle member and having one end connected to said arm and its other end engaged with said handle member, said arm and said spring bar providing a continuous constant moment arm of substantially constant length, whereby pressure applied to said grip portion is transmitted to the work through said handle member, thence through said spring bar and finally through said work-engaging member, and means for indicating the amount of pressure applied to the work by measuring the extent of relative rock movement between said handle member and said arm, said means comprising an operating part extending from said pressure indicating means and a second part on the work-engaging member co-

operable with the first part to actuate said indicating means.

18. A torque measuring wrench comprising, a head member, a work-engaging member rockably supported thereby, a spring bar, means fixably connecting one end of said spring bar to one of said members, means on the other of said members pivotally supporting the other end of said spring bar and confining it against lateral displacement, and means for indicating the pressure applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

19. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having provision for operably engaging it with the work, a handle member rockably connected to said head member, a spring bar carried by one of said members and so mounted that its end portions are retained against lateral displacement and its mid portion is free to flex, and means operably connecting the other of said members to said mid portion so that the spring member yieldably opposes relative rock movement between said head and handle members.

20. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having provision for operably engaging it with the work, a handle member rockably connected to said head member, a spring bar supported wholly by one of said members, and abutment means carried by the other of said members and adapted to engage said spring bar intermediate its ends so that pressure applied to said spring bar by one member is transmitted through said spring bar to the work-engaging member and the work.

21. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having provision for operably engaging it with the work, a handle member rockably connected to said head member, a spring bar carried wholly by said head member and having its opposite ends retained against lateral movement with its mid portion free to flex, and means for operably connecting said handle member to said mid portion so that said spring bar yieldably opposes relative rock movement between said head and handle members.

22. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having an opening therein in which the end of said spring bar is freely received, said head member having aligned openings in the top and bottom walls thereof with their axes extending substantially parallel with the axis of rotation of said work-engaging member, and a pair of oppositely extending bearing members on said supporting members and extending at substantially right angles to said bar-receiving opening, said bearing members being rotatably received in said head member openings.

23. A torque measuring wrench comprising a head member including a grip portion, a work-engaging member rockably connected thereto, an elongated normally straight spring bar having its active flexing part disposed wholly between said rockable connection and said grip portion, means rigidly connecting one end of said spring bar to said work-engaging member, means providing a longitudinally slidable connection between said spring bar and said head member, said connection confining said spring bar against movement in either direction relative to said head member and in a plane at right angles to the rock axis of said rockably connected members so that said work-engaging member can be utilized to tighten left or right hand threaded work pieces, and means indicating the amount of pressure applied to the work by measuring the extent of relative rock movement between said head and work-engaging members.

24. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted in said head member and having a part exteriorly accessible for connection with the work, a rigid arm on said work-engaging member and having a longitudinal opening of predetermined cross-sectional size and length extending from its outer end toward the axis of rotation of said work-engaging member, an elongated spring bar of substantially uniform cross section throughout its length having one end securely mounted in and extending substantially to the rear end of said arm opening, a second connection between the other end of said spring bar and said head member, and means for connecting said work-engaging member with a pressure indicating mechanism responsive to relative movement of said head and work-engaging members.

25. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted in said head member and having a part exteriorly accessible for connection with the work, a rigid arm integrally extending from said work-engaging member and having an opening of predetermined cross-sectional size and length in its outer end and extending toward the axis of rotation of said work-engaging member on a line passing through said axis at substantially right angles thereto, an elongated straight spring bar of substantially uniform cross section throughout having one end extending into said arm opening substantially the full length of the latter, a connection between the other end of said spring bar and said head member, whereby said spring bar yieldably opposes relative movement between said members, and pressure indicating mechanism for measuring the extent of relative movement between said members in terms of pressure applied to the work.

26. A torque measuring wrench comprising an elongated head member having top and bottom walls, said head member having aligned circular openings at the forward end thereof in said top and bottom walls, aligned circular openings at the rear end thereof in said top and bottom walls and an intermediate opening in said top wall, a work-engaging member having parts rotatably mounted in said forward openings, a spring bar connected at one end to said work-engaging member, a connection between the other end of said bar and said head member including a member having parts rotatably mounted in said rear openings, indicating mechanism

having a part fitting in said intermediate opening, operating means carried by said part and extending into said head member, and means carried by said work-engaging member and adapted to be operably engaged with said operating means merely by axial insertion of said mechanism part in said intermediate opening.

27. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted in said head member and having a part exteriorly accessible for connection with the work, a rigid element on said work-engaging member and having a longitudinal opening of predetermined cross-sectional size and length extending from its outer end toward the axis of rotation of said work-engaging member, an elongated spring bar of substantially uniform cross section throughout its length having one end securely mounted in and extending substantially to the rear end of said element opening, a second connection between the other end of said spring bar and said head member, and means for connecting said work-engaging member with a pressure indicating mechanism responsive to relative movement of said head and work-engaging members.

28. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with an opening, said opening extending in a direction transverse to the axis of rotation of said work-engaging member and lying across said axis, an elongated flexible spring bar having one end thereof securely mounted in said opening and having its opposite end connected to said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, and indicating means operable by said work-engaging member as said head member and work-engaging member rotate relative to each other for indicating the force applied to the work through said members and spring bar.

29. A torque wrench comprising a body member, a head member rotatably carried by said body member, a torque resisting beam carried at one end by one of said members, means providing a pivotal connection between the other end of said beam and the other of said members, indicating means, and means for connecting one end portion of said beam with said indicating means.

30. A torque measuring wrench adapted to tighten work having right or left hand threads comprising, a head member, a work-engaging member rockably supported thereby, a spring bar, means fixably connecting one end of said spring bar to one of said members, means on the other of said members slidably receiving the other end of said spring bar and confining it against lateral displacement in opposite directions, and means for indicating the pressure applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

31. A wrench adapted to tighten work having right or left hand threads comprising, a head member, a work-engaging member rockably supported thereby, a spring bar, means fixably connecting one end portion of said spring bar to one of said members, abutment means on the other of said members engaging the other end portion of said spring bar and confining it against lateral displacement in opposite directions while permitting free relative longitudinal movement thereof, and means for indicating the force applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

32. A torque measuring wrench comprising, a handle member, a work-engaging member rockably supported thereby, an arm extending substantially radially from said work-engaging member, a spring bar, means fixably connecting one end of said spring bar to said arm, means on said handle member pivotally supporting the other end of said spring bar and confining it against lateral displacement, and means for indicating the pressure applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

33. A torque measuring wrench comprising, a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said work-engaging member and extending across the axis of rotation of said work-engaging member and having its opposite end arranged to have a force applied thereto through said handle member, and means responsive to flexing of said spring bar and consequent relative rock movement of said work-engaging and handle members for indicating the force applied to the work.

34. A torque measuring wrench comprising, a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said work-engaging member and extending across the axis of rotation of said work-engaging member and having its opposite end pivotally connected with said handle member, and means responsive to flexing of said spring bar and consequent relative rock movement of said work-engaging and handle members for indicating the force applied to the work.

35. A torque measuring wrench comprising, a handle member having a grip portion on one end thereof, a work-engaging member rockably supported by the other end of said handle member, a rigid work-engaging element rigidly connected to said work-engaging member to maintain a constant relationship between the axis of rotation of the work and the axis of rotation of said handle member relative to said work-engaging member, a normally straight spring bar member rigidly connected at one end to said work-engaging member and extending toward said grip portion so that its entire active flexing portion is disposed wholly between the axis of rotation of said work-engaging member and said grip portion in general longitudinal alignment with said work-engaging member and said grip portion, means operably connecting the other end of said spring bar member to said handle member so that pressure is applied to the work directly through said handle member, spring bar member, work-engaging member and work-engaging element in the order named, whereby the leverage between the work and said spring bar member is maintained constant, indicating means carried by one of said members and including relatively movable elements, and means for connecting one of said relatively movable elements

of said indicating means to one of the other of said members whereby it is actuated to indicate pressure applied to said handle member and, in turn, the work through said grip portion without exerting through said indicating means the pressure applied to the work, the arrangement being such that said indicating means indicates pressure applied at all points within the flexing range of said spring bar member.

36. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises a handle member having a grip portion, a work-engaging member having a portion pivotally supported adjacent one end of said handle, means coaxial with the axis of said pivotally supported portion by which said work-engaging member may be connected with the work, an arm member on said work-engaging member and extending longitudinally of said handle member, a normally straight, stiff spring bar extending from said arm longitudinally of said handle member in substantially radial relation to the axis of rotation of the pivoted portion of said work-engaging member and having one end connected to said arm and its other end engaged with said handle member at a predetermined distance from the axis of rotation of the pivoted portion of said work-engaging member and at a point between said grip portion and said axis, said arm and said spring bar providing a continuous constant moment arm of substantially constant length, whereby pressure applied to said grip portion is transmitted to the work through said handle member, thence through the spring bar and finally through said pivoted portion of said work-engaging member.

37. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member extending substantially throughout the length of the wrench and having a grip portion adjacent one end thereof, a work-engaging member having a portion pivotally supported adjacent the other end of said handle member and another portion located on the axis of the first portion and adapted for connection of the work-engaging member with the work, a normally straight spring bar disposed in end to end relation to said grip portion and the pivoted portion of said work-engaging member with its longitudinal axis extending substantially radially relative to the axis of the pivoted portion of said work-engaging member, said spring bar having one end fixedly mounted in said work-engaging member substantially at the pivotal axis thereof with its other end in slidable engagement with said handle member at a point between said axis of the pivoted portion of said work-engaging member and said grip portion and at a predetermined and substantially constant distance from the axis of the pivoted portion of said work-engaging member, whereby pressure applied to said grip portion is transmitted directly through said handle member, thence forwardly through said spring bar from one end thereof to the other, thence to the pivoted portion of said work-engaging member and to the work through a constant moment arm effective to rotate the work notwithstanding the position at which pressure is applied to said grip portion.

38. A torque wrench, comprising: a handle member including an elongated body member having a chamber extending throughout substantially the full length of the body member and a longitudinally extending grip portion carried by said body member; an indicator carried by said handle member, said indicator being located at a point between the ends of said chamber; a work-engaging member having an enlarged portion in said chamber and a relatively smaller portion extending from said enlarged portion to the exterior of said chamber and adapted to be operatively connected with the work; means connecting said enlarged portion of said work-engaging member to said handle member, whereby force applied to said handle member is transmitted to said work-engaging member through said connecting means, the enlarged portion of said work-engaging member being arranged so that it can turn relative to said handle member in proportion to the force applied to the work; an elongated arm means in said chamber, one end of said elongated arm means being fixedly secured to the enlarged portion of said work-engaging member and extending radially from said enlarged portion and lengthwise of said chamber toward said grip portion, the opposite end of said elongated arm means being free to move upon turning of said enlarged portion of said work-engaging member relative to said handle member, and means operatively connecting said free end of said elongated arm means to said indicator to actuate said indicator upon movement of said free end of said elongated arm means.

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Nov. 3, 1942. H. W. ZIMMERMAN Re. 22,219

TORQUE MEASURING WRENCH

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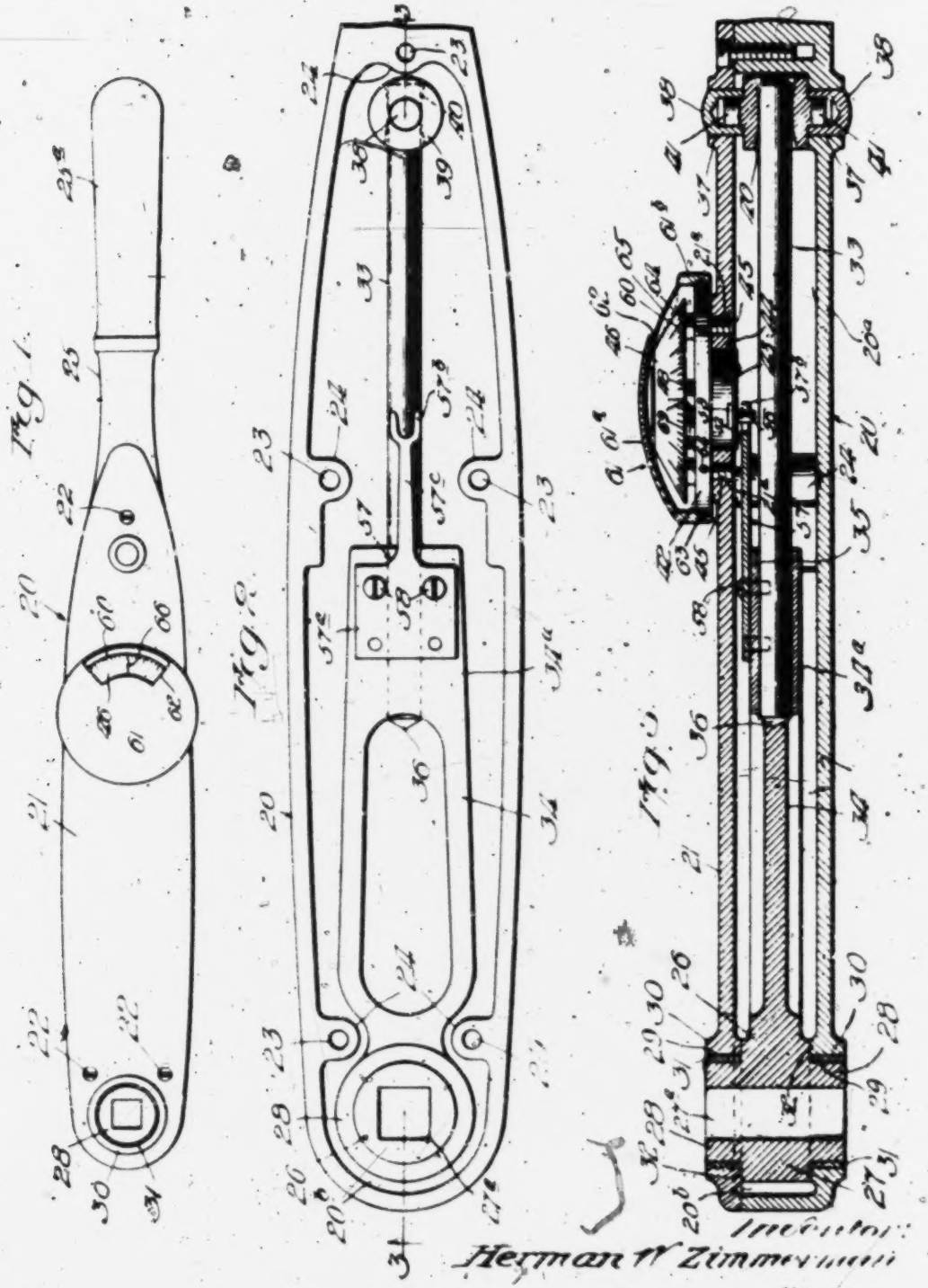


Fig. 1.

Fig. 2.

Fig. 3.

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TORQUE MEASURING WRENCH

Original Filed May 31, 1938 3 Sheets-Sheet 2

Fig. 4.

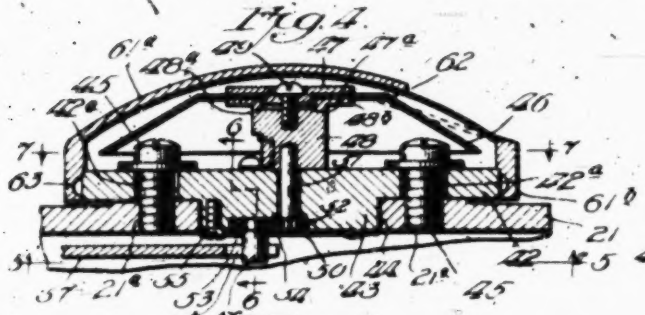


Fig. 6

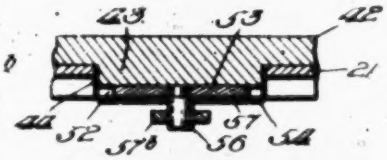


Fig. 5

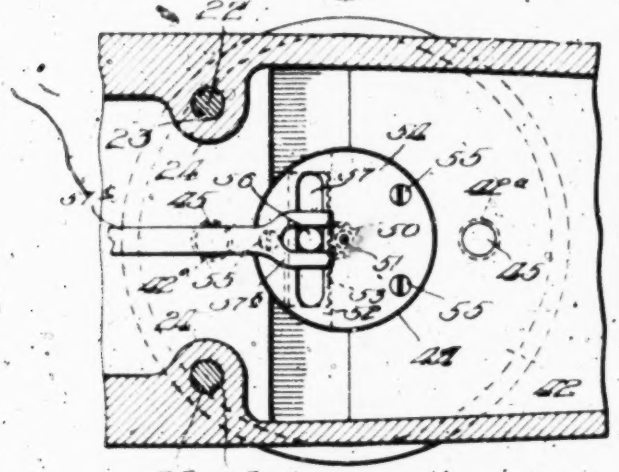


Fig. 7

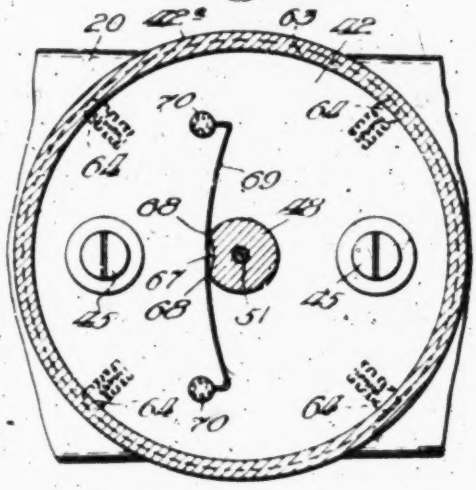


Fig. 8

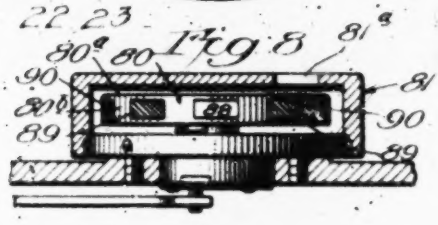


Fig. 10

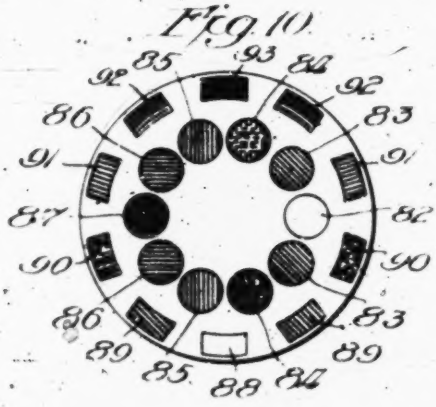
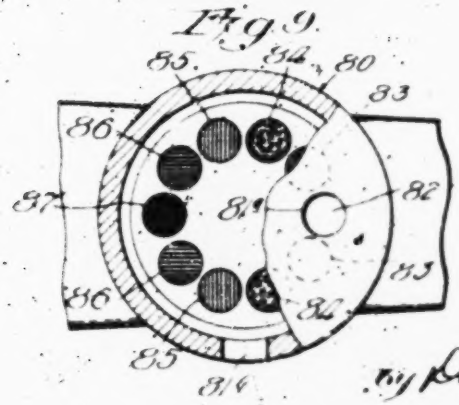


Fig. 9.



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Original Filed May 31, 1938 3 Sheets-Sheet 3

Fig. 11.

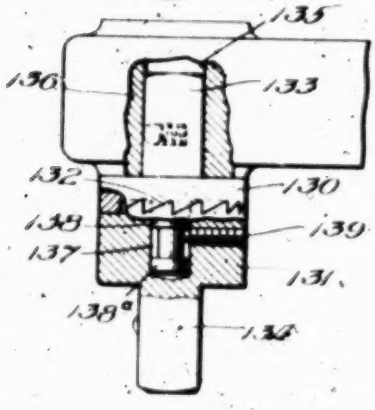


Fig. 13

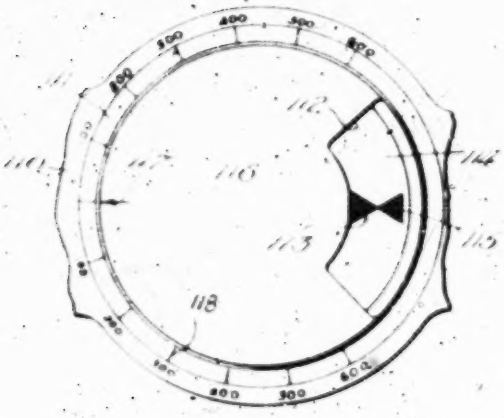


Fig. 12.

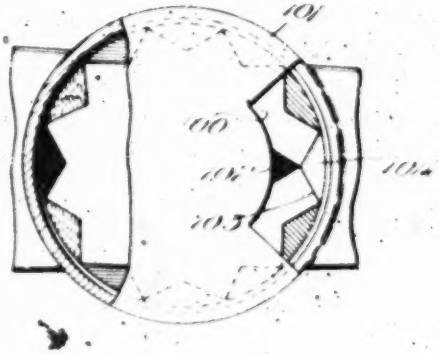
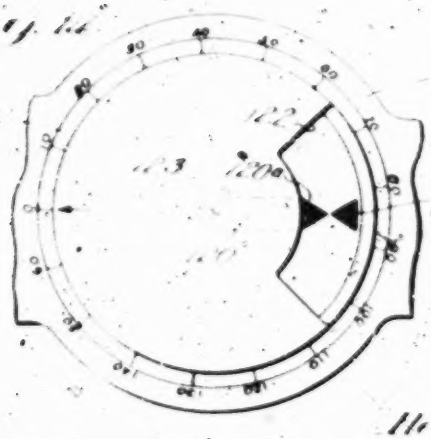


Fig. 14



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Re. 22,219

UNITED STATES PATENT OFFICE

22,219

TORQUE MEASURING WRENCH

Herman W. Zimmerman, North Newington, Conn., assignor, by mesne assignments, to Automotive Maintenance Machinery Co., North Chicago, Ill., a corporation of Illinois

Original No. 2,269,503, dated January 13, 1942, Serial No. 210,869, May 31, 1938. Application for reissue January 24, 1942, Serial No. 428,142

31 Claims. (Cl. 265—1)

My invention relates to torque measuring wrenches adapted for determining the force or torque applied therethrough to work such as nuts, bolts, studs and the like.

One of the objects of my invention is to provide an improved torque measuring wrench which is of a simple, inexpensive, rugged and compact construction, and which is adapted to efficiently perform its torque measuring and indicating functions with precision at all times and under all normal conditions of use.

Another object is to provide an improved indicating mechanism for torque measuring wrenches which is of a very simple and inexpensive construction, embodies but few operating parts, is durable and capable of withstanding rough usage, is adapted to accurately record the force or torque applied through the wrench, and is so constructed and arranged that it may be readily and quickly assembled as a complete unit with the remainder of the wrench structure.

A further object is to provide a torque measuring wrench that is well adapted for uniform reproduction in large quantities for production purposes, the arrangement being such that but few wrench parts are employed, which parts are of a character adapted for accurate reproduction in large quantities, and which may be assembled without special selection in wrenches having the same power rating and having the ability to do the same work with uniformity in action and accuracy. The wrench parts are so constructed that corresponding parts of different wrenches having the same power rating may be interchanged without variation in the intended operation and power rating of the wrenches.

Other objects are to provide a wrench of the foregoing character having a pair of relatively movable parts with an elongated spring member engaged at its opposite ends with such parts and yieldably opposing relative movement therebetween, the arrangement being such that the connections between the movable parts and between such parts and the spring member are of precision character adapted to be accurately reproduced in successive wrenches, enabling the connected parts of different wrenches to be interchanged without impairing the intended accuracy of the wrench; to provide an improved connection between relatively movable wrench parts and the gage mechanism by which the gage mechanism may be readily and easily applied and removed without detachment of any of the other wrench parts, and which is of a character adapted to absorb shocks experienced in the use of the wrench, thereby tending to minimize injury to the gage mechanism; to provide means for insuring return of the gage mechanism to its normal position of rest notwithstanding play or backlash in gears employed in the gage mechanism; to provide improved visual means associated with the gage mechanism by which the operator may readily determine from various angles when the desired pressure is applied to the work; to provide a wrench that may be readily and easily assembled, disassembled and used by an unskilled workman; and to provide a simple and inexpensive, but efficient, ratchet unit that may be readily and detachably applied to the wrench.

Other objects and advantages will become apparent as this description progresses and by reference to the drawings wherein—

Figure 1 is a top plan view of one form of wrench embodying my invention;

Fig. 2 is an enlarged view of the head portion of the wrench shown in Fig. 1, the top cover being removed to illustrate the internal wrench parts;

Fig. 3 is a longitudinal section taken substantially on the line 3—3 of Fig. 2;

Fig. 4 is an enlarged vertical sectional view of the gage mechanism and the parts by which it is associated with the remainder of the wrench structure;

Fig. 5 is a horizontal sectional view taken substantially at the position indicated by the line 5—5 in Fig. 4;

Fig. 6 is a detail sectional view taken substantially on line 6—6 of Fig. 4;

Fig. 7 is a horizontal sectional view taken substantially on line 7—7 of Fig. 4;

Fig. 8 is a vertical sectional view of another form of gage mechanism that may be employed in a wrench embodying my invention;

Fig. 9 is a top plan view of the structure shown in Fig. 8, a portion of the upper part of such structure being shown in section;

Fig. 10 is a diagrammatic outline view of the dial structure shown in Figs. 8 and 9, and by which the relationship of the top and side dial markings is better shown;

Fig. 11 is a fragmental view, partially in section, of a ratchet form of wrench embodying my invention;

Fig. 12 is a top plan view, partially in section, of another form of gage mechanism embodying my invention; and

Figs. 13 and 14 are top plan views of addi-

tional forms of gage mechanism embodying my invention.

The wrench shown in Figs. 1 to 7, inclusive, comprises a hollow head portion 20 having a top cover 21 detachably secured thereto by a plurality of screws 22 that engage threaded openings 23 in bosses 24 formed on the inner wall of the head 20. The head 20 is provided with a rearwardly extending integral handle 25 having a grip portion 25ª adapted to receive and position the hand of an operator in the use of the wrench. If desired, however, the rear end of the wrench head 20 may be provided with a socket (not shown) in which a separate handle-piece is secured.

The head 20 rotatably supports a work-engaging member 26. The work-engaging member 26 is provided with an annular body portion 27 having reduced annular bearings 28 extending axially from the opposite sides thereof for rotatable reception in aligned openings 29 formed in adjacent and opposite, thickened wall portions 30 at the forward end of the head 20. Anti-friction bearings 31 are mounted in the openings 29 whereby the work-engaging member 26 is mounted for rotation relative to the head 20 with a minimum of friction. The forward, inner end wall of the head 20 is rounded complementally to the work-engaging body 27, which is of less diameter than the head end wall, thereby providing a peripheral space 20ᵇ between these parts. The inner ends of the aligned head openings 29 are surrounded by narrow annular seat portions 32 against which the outer edges of the opposite faces of the work-engaging body 27 engage. By such an arrangement, together with the anti-friction bearings 31, the head 20 and work-engaging member 26 are adapted for relative rotation with a minimum of friction.

Relative rotation between the head 20 and work-engaging member 26 is yieldably opposed by an elongated spring bar 33 which is connected at one end to the head 20 and at its other end to the member 26. More particularly, the work engaging member 26 is provided with a rearwardly extending rigid arm 34 disposed at right angles to the axis of rotation of the member 26, which arm has a web-shaped central portion that reduces the weight of the arm without impairing its strength and rigidity. It is desired that the arm 34 be sufficiently rigid to prevent flexing of the same in the use of the wrench and, to that end, it is first formed to the shape shown and then hardened in any suitable fashion.

By forming the arm 34 as stated, it is provided with a full section rear end portion 34ª of predetermined size. This arm portion 34ª is provided with an opening 35 extending substantially parallel with the longitudinal median line of the arm 34, which opening is adapted to receive the forward end of the spring bar 33. The opening 35 is drilled entirely longitudinally through the full section end 34ª of the arm and until it breaks through the rear end thereof into the web portion providing air release ports 36 at the juncture with the web portion of the arm. In this way, the opening is readily formed to a predetermined length and diameter. The fit between the end of the spring bar 33 and the arm opening 35 is sufficiently close to provide a tight pressed fit between these parts, and by providing the openings 36 at the end of the arm opening, I am able to force the forward end of the spring bar 33 entirely home within the opening and until it abuts the rear end thereof as shown in Fig. 3. In this way, production of large quantities of wrenches is facilitated in that all work-engaging members and their arms may be similarly formed to receive similarly formed spring bars in exactly the same way.

The rear end of the spring bar 33 is rotatably connected to the rear end of the head 20 in the following manner: The bottom wall 20ª of the head and the cover 21 thereof are provided, at the rear of the head 20, with aligned openings 37 in which are received thimble-like anti-friction bearing members 38 which are so positioned that their open ends extend inwardly of the head 20. Connection between the spring bar 33 and the head is directly accomplished by a cylindrical coupling member 39 which is provided with a transverse opening 40 in which the end of the bar 33 is freely received. The walls of the opening 40 flare or diverge outwardly at both ends from the axis of the coupling member so that the contact between such coupling member and the spring bar is substantially only at and on the axis of the coupling member. The coupling member 39 is provided at its opposite ends with axial journals 41 which are snugly and rotatably received in the bearings 38, the arrangement being such that the connection between the head 20 and the spring bar 33 is a rotatable one. This connection permits rotation between the coupling member 39 and the head 20, as well as limited rock movement between the bar 33 and the coupling member 39, so that the bar 33 will at all times be free to flex normally during operation without any cramping action or any other restriction which may tend to set up conditions causing the wrench to register abnormal forces.

I have found that a cylindrical spring bar is well adapted for the attainment of the purposes of my invention. Spring bars of this character may be formed and tempered quite accurately so that successive spring bars having the same power rating may be formed with but a slight and immaterial percentage of error.

The work-engaging body 27 is provided with an axial opening 27ª. This opening is, preferably, of rectangular shape or any other shape adapted to non-rotatably and detachably receive a work-engaging adapter (not shown) of any suitable and well-known form. Preferably, I employ a work adapter which is arranged to connect the wrench and the work with the axes of the work and the work-engaging body 27 coinciding; however, where the work is difficult of access, different and off-center types of adapters may be employed in order to engage the wrench with the work. In the latter case, for accurate results, the hand grip portion 25ª of the wrench handle should be grasped in a uniform manner in order to insure proper pressure indications when working on successive, related pieces of work which are to be set up to the same pressure.

When the work-engaging member 26 is engaged with the work and the handle 25 is grasped and moved in a clockwise direction (as viewed in Fig. 1), the head 20, work-engaging member 26 and the work, through the coupling afforded by the spring bar 33, move together as a unit until the work is tightened to a point wherein the initial tension of the spring bar 33 is overcome. As this happens and rotation of the wrench handle 25 is continued, the spring bar 33 will be flexed, permitting relative rotation be-

of which relative rotation depends upon the pressure applied and the extent of flexing of the spring bar 33. Therefore, by measuring the extent of this relative rotation, I am able to determine the amount of force or torque applied through the wrench to the work, and one form of gage mechanism well adapted to accomplish this will now be described.

The gage structure shown in Figs. 1, and 3 to 7, inclusive, is detachably supported by the cover-plate 21. The gage structure includes a disc-like body member 42 having an axial depending annular part 43 which is freely received in an opening 44 in the cover-plate 21. The plate 42 (Fig. 4) is detachably secured to the cover 21 by screws 45 which freely pass through slightly enlarged openings 42ª in the plate 42 and engage threaded openings 21ª in the cover 21. The foregoing arrangement provides some play in the unsecured gage mounting so that the gage unit may be shifted somewhat for proper connection with the wrench actuating means hereinafter described. When the parts are properly connected, the screws 45 are tightened, holding the gage in a predetermined position.

The gage structure takes the form of a self-contained unit, and it further includes a frusto-conical dial 46 formed of relatively thin and light-weight material such as Celluloid or the like. The top of the dial is provided with a metallic anchor member 47 having a depending annular part 47ª adapted to be snugly received in a similarly shaped axial opening 48ª formed in the upper end of a rotatable dial support 48. The upper end of the dial support 48 is provided with an enlarged head portion 48ᵇ providing with the anchor member 47 an adequate support for the dial 46. The dial 46 is detachably secured to its support 48 by a screw 49 passing through the anchor-piece 47 and engaging a threaded opening in the support 48.

The dial support 48 is adapted to seat and rotate upon the top of the body member 42, and rotation is imparted to it through a pinion 50 on the lower end of a shaft 51 axially secured to the lower end of the support 48. The shaft 51 is rotatably supported in an opening in the body member 42, the lower end of which opening is enlarged to provide a recess 52 in which the pinion 50 is received.

The pinion 50 is adapted to be actuated by a rack bar 53 which is also located in the recess 52. The rack bar 53 and pinion 50 are retained in operative relation by a comparatively thin plate 54 secured to the bottom of the part 43 by a plurality of screws 55. The rack bar 53 carries a centrally disposed and depending pin 56 which projects downwardly through an elongated slot 57 formed in the plate 54. By moving the rack bar 53 back and forth, the pinion 50 is rotated, in turn rotating the dial support 48 and the dial 46.

Movement of the sliding rack bar 53 by the relative rock movement of the wrench parts 28 and 26 is accomplished through a flat, bar-like coupling member 57, the forward end 57ª of which (Figs. 2 and 3) is of enlarged rectangular-like shape and is secured to the rear end of the work-engaging arm 34 by screws 58. The coupling member is further provided with an elongated narrow stem part 57ᶜ having a fork 57ᵇ at its rear end. The coupling member stem 57ᶜ is of such length that its fork 57ᵇ is aligned with and receives the pin 56 carried by the rack bar 53. With this arrangement, as the wrench head 28 and the work-engaging member 26 rock relatively, the gage mechanism moves relatively to the coupling member 57, thereby imparting movement to the pin 56 and the rack bar 53, in turn, rotating pinion 50, dial support 48 and dial 46. The forked engagement between the coupling member 57 and pin 56 accommodates arcuate movement of these parts during their relative movement.

Wrenches of this character are subjected, at times, to severe shocks and movements which, unless otherwise guarded against, will tend to injure gear-type gage mechanisms. For example, if, in tightening a bolt, stud or other piece of work, breakage of the work should occur while a considerable pressure is being applied to the work, the instantaneous release and reverse actuation of the gage mechanism under the existing tension condition would tend to strip the gears of the gage mechanism. Also, in loosening a piece of work, considerable pressure may be required to move the work and the initial movement, once it is started, may be quite sudden so that the gage mechanism is subjected to shock and movement much like that which occurs when a piece of work breaks. In carrying out my invention, I avoid injury to the gage mechanism under the foregoing conditions by employing a gage coupling member 57 which is adapted to flex and absorb the shocks that are experienced under the conditions in question. Specifically, the coupling member 57 is formed of a high-grade steel material and the coupling arm 57ª thereof is of such width that it will tend to flex when a predetermined pressure is applied to the forked end 57ᵇ thereof; but the pressure required to flex the arm 57ᵇ is greater than any pressure that will be exerted on the member 57 in the normal relative rotation of the wrench parts. In other words, the pressure normally exerted on the member 57 is only that required to move the sliding rack bar 53, pinion 50 and the dial unit, which pressure is necessarily very much less than that which would be suddenly exerted on the arm by the spring bar 33 in case of abrupt release of the parts with the spring bar under any considerable tension.

The side wall of the gage dial 46 (Fig. 3) is provided with a scale 60 graduated from zero in opposite directions to indicate, preferably, relative movement of the parts and pressure applied to the wrench in terms of inch-pounds pressure. The dial is enclosed by a removable and rotatably adjustable cover 61 having a dome-shaped top wall 61ª and a depending annular side wall 61ᵇ. The top wall 61ª of the cover is provided with a sector-shaped window 62 near its periphery through which the angularly disposed scale 60 of the dial 46 may readily be observed.

The cover 61 is detachably secured to the gage body member 42. Specifically, the cover side wall is provided near its bottom edge with an internal annular groove 63. The peripheral edge of the gage body 42 is provided with a plurality of apertures in which spring-pressed balls 64 are received, the arrangement being such that the cover 61 is adapted to be snapped upon the gage plate 42 with the balls 65 received in the grooves 63. In this way, outward accidental displacement of the cover is avoided and such cover may be rotated to any position relative to the dial where it will be held by the tension of the spring-pressed balls 64. The cover 61 may be removed intentionally by applying sufficient pres-

sure to its lower edge to overcome the tension of the spring-pressed balls 64.

It will be appreciated that the operator, in using the wrench, may assume various positions in which he must observe the dial 46 from various angles. To facilitate the reading of the dial scale 60 under these conditions, the cover window 62, which is covered by a transparent member 65, is located in the inclined wall surface of the dome-shaped top 61ª of the cover. This wall surface extends in a direction substantially parallel with the slanting side wall of the dial 46 on which the scale 60 is located. With such an arrangement, the operator may read the dial scale 60 at various angles from beyond the vertical to below the horizontal and from the opposite sides of the wrench. The transparent window 65 is provided with a centrally disposed indicating line 66 which is adapted to register with the graduations of the dial scale 60. In use, for example, the cover indicating line 66 may coincide with a zero point on the scale 60 when the wrench is at rest; and, if it is desired to set up a piece of work to a desired pressure, such pressure will have been reached when the dial 46 is rotated to an extent to register that pressure indication on the dial 46 with the indicating line 66. Or, if desired, the cover 61 may be rotated relative to the dial, in the at-rest position of the wrench, until its indicating line 66 coincides with a certain pressure graduation on the dial 46 and, when sufficient pressure is applied to the wrench to rotate the dial to bring its zero scale marking into coincidence with the line 66, the intended pressure has been applied.

Gage mechanism of the foregoing character must necessarily be sensitive and operate with precision. It is, therefore, highly desirable where the dial motion transmitting means includes gears to provide means compensating for play and backlash necessarily existent in the use of such gears. Otherwise, variation in the normal at-rest position of the dial may occur. To avoid any such condition, I provide spring means (Figs. 4 and 7) for always returning the dial when the wrench is at rest to a predetermined normal, at-rest position.

To the foregoing end, one side of the lower portion of the dial support 48 is provided with a concave cut-out 67 forming point contacts 68 that are engaged by an elongated spring member 69 having its opposite ends supported by posts 70 on the opposite sides of the member 48. The posts 70 are so located and the spring 69 is so shaped that the latter engages the points 68 under tension. With this arrangement, the dial support 48 will always be returned to its normal, at-rest position (Fig. 7) notwithstanding any play or backlash between the teeth of the slide rack bar 53 and pinion 56, due to the fact that the spring 69 always tends to rotate the member 48 to its center position with both of the contact points 68 engaged as the member 48 approaches its normal, at-rest position. The spring 69 further tends to act as a brake in steadying the rotative movement of the dial structure in any position thereof.

It will be seen from the foregoing that I have provided a highly efficient wrench while using but few parts in the wrench structure as a whole, including the gage mechanism. I have also provided an arrangement which may be quickly and easily assembled and disassembled without the necessity of using any special tools. Thus the work-engaging member may be first applied to the wrench head 20 and it is secured in place therein merely by applying and securing the cover plate 21. The gage mechanism may be readily applied as a unit, it being only necessary to insert the part 43 in the cover opening 44 at a position wherein the screws 45 will engage the openings 21ª, in which position the depending rack bar pin 56 will be received in the forked end 57ᶜ of the coupling member 57. After the plate 42 with its dial support 48 are thus secured, the dial 46 may be secured to the support 48 and the cover 61 then snapped in place. For sake of precision in operation and also as an aid in reproduction of similarly powered and acting wrenches in large quantities, the axis of the rotatable connection between the head 20 and work-engaging member 26, the rotatable axis of the connection between the rear end of the spring bar 33 and the head 20, and the axis of the gage-receiving cover opening are all longitudinally aligned. This facilitates assembly and proper fit of the parts without the necessity of specially fitting and testing individual parts and wrenches.

I have also found that the weight of the dial is of importance from the standpoint of injury to gear mechanism upon sudden operations causing shocks in the use of the wrench. In other words, the lighter the dial structure, the more satisfactory it is from the foregoing standpoints. For that reason, as above stated, the dial 46 is formed of very thin and light-weight material which may be readily applied to rotatable supporting structure, as shown in Fig. 4, without the use of weight-increasing liners or supports.

It will be understood that the dial may take various shapes and may carry different indicating media such, for example, as those shown in Figs. 8 to 10 and 12 to 14. Specifically, with respect to Figs. 8 to 10, inclusive, the gage structure illustrated is similar to that previously described except that the dial 80 is provided with a flat top 80ª and a skirt 80ᵇ extending at substantially right angles thereto. The cover 81 is similarly shaped, being provided with a circular opening 81ª in its top and a rectangularly-shaped opening 81ᵇ in its skirt, the two openings being located approximately 90 degrees apart.

The dial 80 is provided with color indicia on both the top and skirt thereof, each color indicating a certain pressure or a certain desired position which the gage is to assume in order to properly set up a piece of work. More particularly, the top of the dial is provided with a plurality of colored discs that are adapted to coincide with the top cover opening 81ª. These discs may be so arranged that in the normal, at-rest position of the wrench a white disc 82 registers with the cover opening 81ª. Extending both clockwise and counterclockwise (as viewed in Fig. 10) from the white disc 82, the discs 83 may be colored green, the discs 84 may be yellow, the discs 85 may be red, the discs 86 may be blue, and the disc 87 may be black. Likewise, the side wall of the dial may be provided with a white area 88 adapted to coincide with the side wall cover opening 81ᵇ in the normal, at-rest position of the wrench, and it may also be provided with oppositely extending rows of green areas 89, yellow areas 90, red areas 91, blue areas 92 and a black area 93. The arrangement of the discs on top of the dial and the squares in the skirt

color, upon movement of the wrench in either direction, as to tighten or loosen the work, registers with the top cover opening 81ª, a similarly-colored disc will register with the opening 81ᵇ in the side wall of the cover. In this way, the operator is able to determine the pressure indicated by the wrench from the various positions that he may assume in using the wrench. I have found dial structure of this character to be useful where the wrench is to be used for different kinds of work that is to be set up to different pressures. Each color may indicate a certain pressure and, following instructions given as to the pressure indicated by each color, the workman using the wrench need only be instructed to set up one piece of work to the yellow color, another piece to red, another to blue, etc. Or, if desired, the cover 81 may be rotated so that its openings register with a particular color, instructions being given to set up the piece of work until the white color marks register with the cover openings.

In Fig. 12 I have shown a dial similar to that just described, except that the dial and cover therefor are shaped similarly to the corresponding parts shown in the first-described form. In this form, the transparent window 100 of the cover 101 is provided with a black V-shaped indicating mark 102. The slanting side wall of the dial is provided with a plurality of inverted V-shaped color zones 103 which may be colored similarly to the areas shown in Fig. 10, or in any other way desired. In this form, I may employ a white zone 104 which, when its apex coincides with that of the black mark 102 on the cover, indicates the normal, at-rest or zero position of the device. Relative movement between the wrench parts results in movement of the dial color zones relative to the black cover mark 102 and any particular color zone may represent a predetermined-pressure condition or the extent to which any particular piece of work should be tightened.

In Fig. 13 I have shown a dial arrangement shaped similarly to that of Figs. 4 and 12 but having different pressure indicating means. In this form, the top cover 110 of the wrench is provided with a scale 111 having a zero point and graduations extending in opposite directions therefrom indicating, preferably, inch-pounds pressure. The transparent cover window 112 is provided with a V-shaped black indicating mark 113 and the slanting side wall 114 of the dial is provided with a triangularly shaped indicating mark 115. In the zero position of the wrench parts, the apexes of the marks 113 and 115 coincide. If it is desired to set up a piece of work to a point requiring the application of, say 300 inch-pounds pressure, the cover 116 is rotated in clockwise direction (as viewed in Fig. 13) until its arrow mark 117 coincides with the 300 mark 118 on the scale 111. With the wrench so set, the work is then tightened until a sufficient pressure is exerted to cause rotation of the dial 114 in a clockwise direction to bring its indicating mark 115 into alignment with the cover mark 113. Indications are given in a similar manner when the wrench is rotated in the opposite direction, as when loosening the work.

In Fig. 14 I have shown an indicating means similar to that of Fig. 13 except that a hand or pointer 120 is used instead of a dial such as shown in Figs. 4 and 13. In this form, the outer end 120ª of the hand or pointer is V-shaped and in the normal zero position of the wrench its apex coincides with that of a triangularly shaped mark 121 on the transparent window 122 of the cover 123. In this form, a scale 124 similar to the scale 111 of Fig. 13 is employed and the device is used in the same way as that of Fig. 13. The use of a hand 120 instead of a complete dial still further reduces the weight of the rotating dial structure, thereby further aiding in precision of operation.

At times it may be desirable to use a wrench of the foregoing character with a ratchet feature and, for that purpose, I provide an improved form of ratchet unit that may readily be attached to and disconnected from the wrench. One form of the unit that I employ is shown in Fig. 11.

Specifically, the ratchet structure includes a pair of ratchet heads 130 and 131, each of which is provided with ratchet teeth 132 adapted to be engaged in the manner illustrated. These heads also are provided on their outer surfaces with axial extensions 133 and 134, respectively, which are adapted to non-rotatably engage in irregularly shaped opening 135 of the work-engaging member 136 or in a similar opening formed in a work adapter (not shown). The head 131 is further provided with an axial recess 137 in which is received the enlarged head 138ª of a pin or projection 138 axially carried by the head 130. A screw 139 carried by the head 131 is provided with a reduced end portion projecting into the recess 137 where it is adapted to be engaged by the head 138ª of the pin 138, thereby limiting the extent to which the ratchet heads may be separated. The extent of this movement need only be slightly greater than the depth of the ratchet teeth 132 whereby the ratchet heads may be separated in axial direction for movement of one relative to the other as in the non-ratcheting movement of the ratchet structure. The wrench structure may be similar to that shown in Figs. 1 to 3, inclusive, or it may take any other form suitable for connection with the ratchet unit. In the use of the structure, with the ratchet unit engaged with the work, the weight of the wrench is normally sufficient to move and hold the uppermost ratchet head in operative engagement with the lower ratchet head. If the work is being tightened, backward or counterclockwise movement of the wrench will result in the ratchet teeth of the lower ratchet head camming the ratchet teeth of the upper head out of engagement therewith so that no movement of the work takes place; but, upon the reverse movement of the wrench, the teeth normally move into engagement with each other and form a rigid unit through which pressure is directly applied to the work. Either shank extension of the ratchet unit may be connected to the wrench, which is an added convenience in applying the ratchet unit. Also, the ratchet unit may be employed as an accessory for other types of wrenches and for converting the same for ratchet operation. It will be seen from the foregoing that I have provided a very simple and inexpensive ratchet structure which embodies but few parts, none of which is of a character likely to get out of working condition in the ordinary use of the wrench.

I believe that the operation and advantages of my invention will be apparent from the foregoing description. The wrench embodying my invention is not only simple in construction but it is inexpensive to manufacture. At the same time, the wrench is adapted to accurately measure

the pressure applied. The parts of the wrench are such that they may be accurately reproduced and stocked so that successive wrenches may be assembled from parts indiscriminately selected, thereby providing a wrench capable of satisfactory manufacture on a large production basis. Individual selection, testing and adjusting of wrenches is not necessary.

I claim:

1. A torque measuring wrench comprising an elongated head member, a work-engaging member rotatably mounted in said head member at the front end thereof and having a part exteriorly accessible for connection with the work, a rigid arm on said work-engaging member extending rearwardly within said head member and having a longitudinal opening of predetermined size leading from its rear end toward the axis of rotation of said work-engaging member and at right angles thereto, said arm also having at least one vent opening connecting the inner end of said opening to atmosphere, an elongated spring bar in said head member and having one end shaped similarly to said arm opening and fitted therein so that such bar end extends substantially to the inner end of said arm opening, means connecting the other end of said spring bar to said head member so that said spring bar serves as the sole means opposing relative movement between said members, and means for associating one of said members with an indicating means adapted for measuring relative movement between said members in a manner to indicate pressure applied to the work.

2. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising an elongated head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having an opening therein in which the end of said spring bar is freely received, said head member having aligned openings in the top and bottom walls thereof with their axes extending substantially parallel with the axis of rotation of said work-engaging member, bearing elements secured in said head member openings, and a pair of oppositely extending and axially aligned bearing members on said bar-supporting member and extending at substantially right angles to said bar-receiving opening and rotatably received in said bearing elements.

3. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising an elongated head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having an opening therein in which the end of said spring bar is freely received, said head member having aligned openings in the top and bottom walls thereof with their axes extending substantially parallel with the axis of rotation of said work-engaging member, thimble-shaped anti-friction bearing elements mounted in said head member openings with their open ends extending inwardly toward each other, and axially aligned bearing members on said bar-supporting member and rotatably received in said bearing elements.

4. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having opposed and axially aligned bearing members, said bar-supporting member also having a bar-receiving opening extending therethrough at substantially right angles to the axis of said bearing members, the opposite end walls of which opening converge inwardly toward the mid-portion of such opening so that said bar is normally engaged therein substantially on the axis of said bearing members, said bearing members being rotatably carried by the top and bottom walls of said head member.

5. A torque measuring wrench comprising a head member having top and bottom walls, said head member having aligned circular openings at the forward end thereof in said top and bottom walls, aligned circular openings at the rear end thereof in said top and bottom walls and an intermediate opening in said top wall, all of said openings having their centers substantially longitudinally aligned with each other, a work-engaging member having parts rotatably mounted in said forward openings, a spring bar connected at one end to said work-engaging member, a connection between the other end of said bar and said head member including a member having parts rotatably mounted in said rear openings, whereby said bar serves as the sole means opposing relative movement between said head and work-engaging members, mechanism indicating the pressure applied to the work including a part fitting in said intermediate opening, operating means supported by said mechanism part, coupling means operably connecting said work-engaging member with said operating means, said rotatably mounted parts being so constructed and arranged and all said openings so aligned that said coupling means and operating means are operably engaged merely by moving said mechanism part to one predetermined position relative to said coupling means and inserting it axially within said intermediate opening.

6. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, gage mechanism carried by one of said members and including an operating part movable back and forth, and coupling means carried by the other of said members and having an element adapted to receive said operating part for moving the latter back and forth as said members rock relatively, said coupling means being adapted to flex in the direction of movement of said operating part.

7. A torque measuring wrench comprising a pair of members rockably connected together,

means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, gage mechanism carried by said other member and including an operating part movable back and forth, and a coupling member connected at one end to said one member and having its other end free and constructed to receive said operating part for imparting motion thereto as said members rock relatively, said coupling member being adapted to flex when subjected to pressure greater than that required to impart motion to said operating part, whereby shocks caused by release of the wrench when said spring means is under operating tension is absorbed by said arm, preventing injury to the operating parts of the gage mechanism.

8. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, pressure indicating means carried by said other member and including a rotatable indicator, gear means for rotating said indicator, a member slidable back and forth for operating said gear means, and a coupling member connected at one end to said one member and having its other end free and of suitable shape for receiving said slidable member and for actuating the latter upon relative rock movement of said members, said coupling member being constructed and arranged to flex when subjected to pressures greater than the pressure exerted therethrough to actuate said slidable member whereby shock caused by release of the wrench parts when they are subjected to high work-applied pressures is absorbed by said coupling member, preventing injury of said indicating means.

9. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising, a head member, a work-engaging member rotatably mounted in said head member, a spring bar having one end secured to said work-engaging member and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a supporting member having bearing means rotatably supported in said head member, said supporting member also having an opening extending therethrough at substantially right angles to the axis of said bearing means, and the wall of said opening converging inwardly in such a manner as to provide a substantially line contact with said spring bar.

10. A torque measuring wrench comprising a head member having top and bottom walls, said head member having aligned circular openings at the forward end thereof in said top and bottom walls, aligned circular openings at the rear end of said head member in said top and bottom walls and an intermediate opening in said top wall, a work-engaging member having parts rotatably mounted in said forward openings, a spring bar connected at one end to said work-engaging member, a connection between the other end of said bar and said head member including a member having parts rotatably mounted in said rear openings, said intermediate opening being constructed and arranged to receive an operating part of a pressure indicating mechanism, and means carried by said work-engaging member and adapted to be operably engaged with the operating part of the indicating mechanism merely by axial insertion of such mechanism part in said intermediate opening from a certain position relative thereto.

11. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, gage mechanism carried by said other member, a pair of operating parts, one carried by said work-engaging member and the other by said gage mechanism, for operating said gage mechanism upon relative rock movement of said members, one of said parts being adapted to flex when subjected to pressure greater than that required to impart motion to the other of said parts, whereby shocks caused by release of the wrench when said spring means is under operating tension are absorbed by said operating parts thereby preventing injury to the gage mechanism.

12. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be operably engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing relative movement of said members, gage mechanism carried by one of said members and including an operating part movable back and forth, a coupling part operably associated with the other of said members, one of said parts being constructed and arranged for connection with the other part for causing simultaneous movement of both parts as said members rock relatively, one of said parts having flexing ability in a direction parallel with said simultaneous movement thereby tending to absorb shocks caused by release of the wrench when said spring means is under operating tension preventing injury to said gage mechanism.

13. A torque measuring wrench comprising a head member having top and bottom walls, one of said walls having an opening therein intermediate its ends, a work-engaging member having axially aligned parts rotatably mounted in the forward part of said head member, a spring bar connected at one end to and extending rearwardly from said work-engaging member, a connection between the other end of said bar and said head member including a member rotatably mounted in said head member, pressure indicating means including a depending operating part adapted to be received in said opening, and means movable upon relative movement of said work-engaging and head members and flexing of said spring bar, said means and said operating part being so relatively constructed and arranged that such means is operably engaged with said operating part merely by axial insertion of said part of the gage mechanism in said opening at a certain rotary position relative thereto.

14. A torque measuring wrench comprising, a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member yieldably opposing relative rock movement of said rockable members, indicator means carried by one of the members, and flexible means

carried by another of the members and being comperable with said indicator means for effecting an indication of the force applied to the work, said flexible means having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member.

15. A torque measuring wrench comprising, a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member yieldably opposing relative rock movement of said rockable members, indicator means carried by one of said members and including an operating-part, and flexible coupling means carried by another of said members and having an element adapted to be operably connected with said operating-part for effecting an indication of the force applied to the work, said flexible coupling means having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member.

16. A torque measuring wrench comprising a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member yieldably opposing relative rock movement of said rockable members, indicator mechanism carried by one of the members and including an operating-part movable back and forth in the direction in which said spring member bends as said members rock relatively, and flexible coupling means carried by another of the members and having an element adapted to be operably connected with said operating-part for moving the latter back and forth as said members rock relatively, said flexible coupling means having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member.

17. A torque measuring wrench comprising a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member carried by one of said rockable members and being operably engaged with the other of said rockable members and being adapted to flex as said rockable members rock relatively, indicator mechanism carried by one of said rockably-connected members and including an oscillatable indicator-operating part, and means carried by another of said members for coupling it to said indicator-operating part, said means including a flexible coupling element having operative engagement with said indicator-operating part, said coupling element having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member, whereby relative rock movement of said rockable members imparts movement to said coupling element and, in turn, oscillating movement to said indicator-operating part to operate said indicator mechanism and said flexible element tends to absorb the shock on said indicator mechanism in the event of a sudden release of the force being transmitted through the wrench.

18. A torque measuring wrench comprising, a pair of members rockably connected together, one of said members being adapted for engagement with the work and the other being adapted to be actuated to apply a turning force to the work, a normally straight flexible spring bar member carried by one of said rockable members and being operatively engaged with the other of said rockable members so as to yieldingly oppose relative rock movement of said rockable members, force indicating means carried by one of said rockable members and including an indicator-operating part, and means for coupling said indicator-operating part to one of the other of said members, said means including an elastic element having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member, whereby when said wrench is in use said indicating means will be actuated to indicate the force applied to the work upon relative rock movement of said rock members and said flexible element tends to absorb the shock on said indicating means in the event of a sudden release of the force being transmitted through the wrench.

19. A torque measuring wrench comprising, a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with a bore, said bore extending in a direction transverse to the axis of rotation of said work-engaging member, an elongated spring bar member having one end thereof securely mounted in said bore and having its opposite end operably connected with said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, and indicator means operable as said head member and work-engaging member rotate relative to each other for indicating the force applied to the work through said members and spring bar.

20. A wrench as defined in claim 19, in which the bore is substantially circular in cross-section and in which at least the portion of the spring bar member which is mounted in said bore is of corresponding cross-section.

21. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with a bore, said bore extending in a direction transverse to the axis of rotation of said work-engaging member, an elongated spring bar member having one end thereof securely mounted in said bore and having its opposite end swivelly connected with said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, and indicator means operable as said head member and work-engaging member rotate relative to each other for indicating the force applied to the work through said members and spring bar.

22. A torque measuring wrench comprising, a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with a bore, an elongated spring bar member having one end thereof securely mounted in said bore and having its opposite end swivelly connected with said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, indicator means, and flexible means operably connected with one of said members and with said indicator means for actuating said indicator means to indicate the force applied to the work through said members and spring bar.

23. A torque wrench adapted for use with means for indicating the force applied to the

work comprising, a head member, a work-engaging member rotatably connected to said head member, an arm extending substantially radially from said work-engaging member, said arm having a longitudinal bore extending from its outer end toward the axis of rotation of said work-engaging member, an elongated spring bar yieldably opposing relative rotary movement of said head and work-engaging members, said spring bar having one end fixedly mounted in and extending substantially to the rear end of said longitudinal bore, means connecting the opposite end of said spring bar to said head member, said means being such as to permit pivotal movement of said spring bar relative to said head member, and means operable upon flexing of said spring bar and consequent relative rotary movement of said head and work-engaging members for operating said indicating means to indicate the force applied to the work.

24. A torque measuring wrench comprising a pair of members, one of said members being adapted to be connected with the work and the other of said members being adapted to have an operating force applied thereto, yieldable torque resisting means operatively connecting said members together arranged so that an operating force applied to said one member is transmitted to the other member to turn the work, the member adapted to be connected with the work including a portion that is rotatably movable relative to the other member by force applied to the work upon yielding of said torque resisting means, indicator means carried by one of the members, and actuating means carried by the other of the members and being cooperable with said indicator means for effecting an indication of the force applied to the work in response to said relative movement, said actuating means comprising a normally unflexed member having sufficient flexibility to absorb shocks caused by release of the wrench when under operating stress, thus preventing injury to said indicator means.

25. A torque measuring wrench comprising a pair of members, one of said members being a work-engaging member adapted to be connected with the work and the other of said members being a handle member adapted to have a turning force applied thereto, yieldable torque resisting means operatively connecting said members together arranged so that turning force applied to said handle member is transmitted to said work-engaging member to turn the work, said work-engaging member including a part rotatably movable relative to said handle member upon yielding of said torque resisting means in proportion to the force applied to the work, indicator means carried by said handle member, and flexible means carried by said part of said work-engaging member, said flexible means comprising a normally unflexed member cooperable with said indicator means for effecting an indication of the force applied to the work, said last-mentioned member having sufficient flexibility to serve as a shock absorbing means to prevent injury to said indicator means upon release of the wrench while under operating tension.

26. A torque wrench comprising: a handle member including an elongated body member having a chamber extending throughout substantially the full length thereof and an elongated cover member adapted to be attached to said body member to form a closure for said chamber; indicator means carried by one of said members; a work-engaging member having a portion in said chamber and being constructed so that it can be operatively connected with the work; a substantially rigid member in said chamber fixed at one end thereof to said work-engaging member and extending substantially radially from said work-engaging member lengthwise of said chamber, a relatively flexible element carried by the opposite end of said rigid member, yieldable torque resisting means providing an operating connection between said handle member and said work-engaging member arranged so that at least the portion of said work-engaging member which is connected to said rigid member can move relative to said handle member during the application of force to the work, and means operatively connecting the free end of said flexible element with said indicator means to actuate said indicator means in response to relative movement of said rigid member with respect to said handle member, said flexible element serving to absorb shocks caused by release of the wrench when under operating stress, thus preventing injury to said indicator means.

27. A torque wrench comprising a casing member, a work-engaging member mounted in said casing member and displaceable relative thereto, means by which said work-engaging member may be engaged with the work, means on said casing member by which it may be moved, yieldable torque resisting means between and opposing relative displacement of said casing and work-engaging member, indicating mechanism carried by said casing member and including an indicating element and a movable operating part therefor, and coupling means secured at one end thereof to said work-engaging member, the opposite end of said coupling means being relatively free and having an element operably connected with said operating part for moving the latter as said casing and work-engaging members are displaced relatively, said coupling means having flexing ability in a direction parallel with the direction of displacement of said casing and work-engaging members.

28. A torque wrench comprising a pair of members rotatably displaceable relative to each other, one of said members having an element adapted to be engaged with the work, the other of said members having a handle by which it may be moved, yieldable torque resisting means opposing rotative movement between said members, and torque measuring means including a gage member on said member having the handle, said gage member having a movable gage operating part, a rigid arm connected to said member having the work-engaging element, a flexible extension on said arm, and a coupling element on said extension adapted to be operably connected to said operating part for operation of said gage member as said members are rotatably displaced, said flexible extension serving to absorb shocks on said gage member.

29. A torque measuring wrench comprising, a handle member, a work-engaging member, yieldable torque transmitting means between said handle member and work-engaging member providing an operative connection between said members for transmitting turning force from said handle member to said work-engaging member, an indicator carried by one of said members for indicating the force applied to the work, and means for actuating said indicator operatively connecting the other of said members with said indicator, said indicator actuating means being

movable transversely to said handle member and including shock absorbing means for absorbing shocks which would otherwise be transmitted to said indicator when said wrench is released while under operating stress, said shock absorbing means being flexible in the direction of movement of said indicator actuating means.

30. A torque measuring wrench as defined in claim 29, in which the shock absorbing means comprises a normally unflexed bar.

31. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, gage mechanism carried by the one of said members having means by which it may be moved, said gage mechanism including an operating part movable back and forth, and coupling means carried by the one of said members having means for engaging it with the work, said coupling means having an element adapted to receive said operating part for moving the latter back and forth as said members rock relatively and said coupling means being adapted to flex in the direction of movement of said operating part.

HERMAN W. ZIMMERMAN.

2071 Northern District of Illinois, } ss.
Eastern Division. }

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled Automotive Maintenance Machinery Co. *vs.* Precision Instrument Manufacturing Company, et al., Civil Action No. 4382 Consolidated, as the same appears from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 30th day of August, A. D. 1943.

Roy H. Johnson,
(Seal) *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume II of the record, which together with Volume I thereof, constitute the printed record, printed under my supervision and filed on the seventeenth day of November, 1943, in:

Cause No. 8392.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp.,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testmony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, A. D. 1944.

(signed) Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and forty-two, and of our Independence, the one hundred and sixty-seventh.

Automotive Maintenance Machinery Company, *Plaintiff-Appellant,* vs. Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp., *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

8392

And, to-wit: On the thirtieth day of August, 1943, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Co.,
Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation,
Defendants-Appellees.

The Clerk will enter our appearances as counsel for Plaintiff-Appellant.

Frank Parker Davis,
332 South Michigan Ave.
Harry W. Lindsey, Jr.,
332 South Michigan Ave.
Raymond E. Fidler,
332 South Michigan Ave.
George N. Hibben,
332 South Michigan Ave.

Endorsed: Filed August 30, 1943. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the second day of September, 1943, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Co.,
Plaintiff-Appellant,

vs.

Precision Instrument Mfg. Company, *et al.*,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for Defendant-Appellee Snap-On Tools Corporation.

Will Freeman,
1400 Field Bldg.,
Chicago
W. P. Bair,
1400 Field Bldg.,
Chicago, Illinois.
Phone—Randolph 5777
Bair & Freeman.

Endorsed: Filed September 2, 1943. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the second day of September, 1943, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,

vs.

Precision Instrument Mfg. Company, *et al.*,
Defendants-Appellees.

The Clerk will enter my appearance as counsel for Appellees Precision Instrument Mfg. Co. and Kenneth R. Larson.

Casper W. Ooms,
209 S. La Salle St.,
Chicago, Ill.

Endorsed: Filed September 2, 1943. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twentieth day of January, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Co.,
Plaintiff-Appellant.

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation,
Defendants-Appellees.

The Clerk will enter my appearance as counsel for Plaintiff-Appellant.

Albert J. Smith,
120 South La Salle Street,
Chicago.

Endorsed: Filed January 20, 1944. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-third day of March, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automative Maintenance Machinery Co.,
Plaintiff-Appellant,

vs.

Precision Instrument Mfg. Co., Kenneth R. Larson and Snap-On Tools Corp.,
Defendants-Appellees.

The Clerk will enter my appearance as counsel for Appellees—Snap-On Tools.

Dayton Ogden,
111 W. Monroe St.,
Chicago.

Endorsed: Filed March 23, 1944. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twentieth day of April, 1944, the following further proceedings were had and entered of record, to-wit:

Thursday, April 20, 1944.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

Automotive Maintenance Machinery Company, *Plaintiff-Appellant,* 8392 *vs.* Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp., *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Frank Parker Davis, counsel for appellant, and by Mr. Casper W. Ooms and Mr. Will Freeman, counsel for appellees; and the Court takes this matter under advisement.

And afterwards, to-wit: On the twenty-sixth day of June, 1944, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 8392. OCTOBER TERM, 1943, APRIL SESSION, 1944.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,
Plaintiff-Appellant,
vs.
PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON and SNAP-ON TOOLS CORPORATION,
Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

June 26, 1944.

Before SPARKS and MAJOR, *Circuit Judges*, and LINDLEY, *District Judge*.

SPARKS, *Circuit Judge*. On June 15, 1942, plaintiff charged Precision Manufacturing Company, Kenneth Larson, and Walter Carlsen with infringement of United States patents to Larson, No. 2,279,792, and to Zimmerman, No. 2,283,888. By amended petition filed November 30, 1942, it further charged infringement of reissue patent No. 22,219, of which patent No. 2,269,503 was the original. These patents were issued, respectively, on April 14, May 19, and November 3, 1942, on applications filed respectively on October 1, 1938, November 22, 1937, and May 31, 1938. All of them relate to torque wrenches, and the applications were assigned to plaintiff.

The joint amended answer of the defendants, filed February 8, 1943, alleged that the defendant Larson had committed perjury by filing a false affidavit with the Commissioner in support of his patent, in an interference proceeding between that patent and the Zimmerman patent No. 2,283,888; that plaintiff knew of that perjury prior to December 23, 1940, and failed to divulge it to the proper authorities; that by reason of that knowledge it threatened the defendants with criminal prosecution unless the defendants would sign the contracts hereinafter referred to, and it promised defendants that it would suppress such evidence of perjury as it had, if defendants would sign the contracts; that under and by reason of those circumstances they signed the contracts against their will; that those contracts were unreasonable and unconscionable and their execution by defendants was procured by the inequitable conduct of plaintiff by which its hands were soiled to such an extent that its bill of complaint should be dismissed.

July 6, 1942, Snap-On Tools Corporation filed a petition for a declaratory decree relating to the controversy with respect to the Larson patent and the contract of December 20, 1940, which plaintiff and the defendants, Larson and Precision, had signed. In final form, by amended petition filed March 1, 1943, the facts therein alleged are substantially the same as set forth in the answers in the other suit. Automotive by way of answer and counterclaim set forth substantially the same allegations, and demanded practically the same relief as demanded in its original action.

By agreement, the two cases were consolidated for hearing on the sole question of inequitable conduct, and voluminous evidence was heard. At the close of the arguments, the District Court rendered an oral opinion on May 21, 1943, which is not in this record, and on July 12, 1943, it filed its special findings of facts, and rendered its conclusions of law thereon. At the same time it filed the following:

"Memorandum.

"In this case, the court rendered an oral opinion at the closing of the arguments. At the request of M. K. Hobbs, an attorney who testified in the case, the court has re-examined the record.

"It is not the intention of the court that the statements in the opinion should be construed as implying

> that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct. Accordingly, the oral opinion is withdrawn and is not to be filed as a part of the record. The Court has entered written findings and conclusions. It appears from an examination of the record that the witness Hobbs did not testify falsely; that he has adhered to the rules which govern the relations existing between attorney and client and that he was not guilty of any professional misconduct or criminal act."

Upon the conclusions of law, and consistent therewith, the court rendered judgment dismissing the complaint, the amended and supplemental complaint of the first action, and the petition, amended petitions and the counterclaims of the second action, all for want of equity. It further ordered that there should be no award for costs. From that judgment Automotive has appealed. Plaintiff and the corporate defendants, including Snap-On, which is considered as a defendant herein, will be hereafter referred to respectively by the first word of their corporate names.

Prior to 1938, Automotive was engaged in the production of a torque wrench invented by Zimmerman, one of its employees, and Snap-On was one of its customers for that wrench.

In 1938, George Thomasma, one of Automotive's trusted employees, who was fully acquainted with its wrench business and with the Zimmerman developments, secretly gave information to the defendant Larson, and they, with one Carlsen, cooperated to establish a competing business with Automotive. Snap-On was approached by Larson with respect to its taking on the wrench which had been developed by him and Thomasma from the Automotive wrench.

On October 1, 1938, Larson filed his application for his patent above referred to, by Alberts, who was then attorney for both Larson and Snap-On. The application was assigned to Snap-On under the terms of an agreement between them dated September 28, 1938.

At that time the application did not claim anything that was common to the Zimmerman and Larson wrenches, but the claims, as interpreted by the disclosure, were limited to a detail which comprised a tail-piece for operating a gauge mechanism. This, we think the evidence clearly dis-

closes, was Larson's contribution, and it was so asserted at the trial by Alberts.

On October 18, 1938, Alberts, Snap-On's patent attorney, had Larson execute for Snap-On an affidavit to the effect that no employee or ex-employee of any competitor of Snap-On had anything to do with the development of his wrench, or would be associated with Larson in the enterprise; that he alone had invented it; and that no other individual had contributed any concept or feature of it.

On October 26, 1938, Snap-On supplied Larson with a letter promising to place with him an order for a quantity of those wrenches. Larson thereupon solicited financial support for the enterprise which was calculated to take away from Automotive its wrench account with Snap-On, and in December 1938, Precision was incorporated. Larson and Thomasma were given stock for the work they had done on the wrench, and Carlsen was given stock for his services, and he also paid cash for some. Larson became president of that corporation, Thomasma was made vice-president, and Carlsen was made secretary and treasurer. The three comprised the board of directors, and Automotive's entire business from Snap-On was taken away by Precision.

Wacker, president of Automotive, had heard rumors that Thomasma, then in its employ, was one of the incorporators of Precision, and, without authority, had removed from the Automotive plant some tools and wrenches. In June 1939, he confronted Thomasma with those rumors. Thomasma denied his connection with Precision, but admitted he had removed some wrenches. Thereupon Wacker discharged him.

On August 31, 1939, the Patent Office suggested to Larson certain claims appearing in the Zimmerman application. Thereupon, Larson through Alberts copied the broad Zimmerman claims in his application, and the Patent Office declared an interference on October 11, 1939, on the counts comprising those claims copied from Zimmerman.

At the request of the Patent Office, Larson, under oath on August 5, 1940, gave the dates of his conception, disclosure, drawing, description and reduction to practice. Those dates were false and antedated Zimmerman's from one to three years.

Within a day or two after receiving a copy of Larson's preliminary statement as to his dates, Automotive author-

ized its attorney to conduct an examination of the facts alleged therein. For that purpose he employed an investigator who had performed similar work for him in years past.

Larson was required to produce his evidence first. Nine witnesses, including himself, were examined, and considerable documentary evidence and physical exhibits were received in evidence on his behalf, the hearing of which began October 24 and ended November 4, 1940. It substantiated Larson's early dates, and cross-examination failed to discredit it.

On November 3, 1940, the day before Larson closed his proofs, Thomasma and his attorney attempted to sell Thomasma's Precision stock to Wacker, president of Automotive. He then asserted that he had given Larson the idea of developing a wrench from the Automotive wrench, but he disclosed no specific facts with respect thereto. Wacker refused the offer.

On the evening of November 7, 1940, Thomasma voluntarily went to the home of Fidler, the attorney for Automotive, and also returned there the following evening. During those times he voluntarily made a statement with respect to his and Larson's work on the wrench. It was taken down in shorthand, transcribed, and sworn to by him on November 15, 1940, and is quite voluminous. He stated therein that Larson came to his home in November 1937, where they discussed the possibility of making a tension wrench, and at that time he showed Larson a socket, a piece of drill rod and a handle; that Larson then made some patterns, and that several wrenches were made by Larson before any drawings of the wrench were made. He further stated that he made a drawing of the device in June 1938, and that it was the same drawing offered by Larson in the interference as the work of a high school boy on May 20, 1936. Automotive, after protracted efforts and considerable expense, was unable to secure anyone who would verify Thomasma's statements, but it learned from its investigation that Larson and Thomasma were then unfriendly and that Larson and Carlsen were trying to force Thomasma out of Precision.

On November 18, 1940, Automotive's attorney, Fidler, submitted to an outside attorney of good standing and large experience the question as to whether he should submit

the matter to either the Patent Office or the District Attorney. He was then and there advised not to submit it at that time to either, as the Patent Office would not consider it until plaintiff's proofs were in, and the District Attorney would not touch it so long as the priority proceeding was pending. He further advised in effect that on account of plaintiff's paucity of proof, and the former disloyalty of its only witness, it could not hope to discredit the nine witnesses whose testimony had supported Larson's priority, and that a suit for damages by the defendants might ensue. He suggested that the better way would be to take the matter up with the attorney for Larson and Snap-On.

On November 20, 1940, Fidler informed Alberts of the contents of the Thomasma affidavit, and Alberts arranged for a meeting on November 28, 1940, which was attended by himself, Fidler, Thomasma, Snap-On's president, and Automotive's president and vice-president. There Thomasma related his story in substantial accord with his affidavit, whereupon Alberts said he would withdraw as attorney for Larson if the facts, as stated by Thomasma, were true. However, he remained Larson's attorney of record in the Patent Office until December 24, 1940, when Larson's application was assigned to plaintiff, as hereinafter referred to.

On the same day, Alberts and Johnson called Larson and Carlsen in consultation, and told them the substance of Thomasma's statement. Alberts said to Larson that if the statement were true, he should get another lawyer, and he recommended any one of three attorneys, including Mr. Hobbs. At that meeting Larson reluctantly confessed that part of his testimony was false. Thereupon he and Carlsen left the room. The substance of this conversation was not disclosed to plaintiff nor to its attorney. The next day, on November 29, Larson and Carlsen employed Hobbs to settle the interference with plaintiff, and for no other purpose. They then notified him that they were willing to concede priority to plaintiff.

Earlier on the same day, Alberts had communicated with Hobbs, and told him that there was an interference between Zimmerman and Larson. He also said that Thomasma in his affidavit had attacked the originality and date of Larson's drawings, and that he was afraid they were not true, and he thought the interference suit should

be settled. Hobbs has never seen Thomasma's affidavit, nor any of the interference evidence, and no one at that time had ever told him that Larson and Carlsen had perjured themselves. Larson, Carlsen and Alberts testified that they told Hobbs of the perjury on that day, but Hobbs denied this, and the District Court tells us by this record that Hobbs told the truth. However, the substance of these conversations was never disclosed to plaintiff or its attorneys.

On the same day, Hobbs notified Fidler that he was employed to settle the interference, and suggested a conference. December 2 was agreed upon, and on that date, before plaintiff or its attorney had proposed any terms, Hobbs proposed that Larson concede priority, that plaintiff give a release for civil damages, and that it license Precision to fulfill existing contracts and commitments for wrenches. This proposal was confirmed by Hobbs' letter to Fidler of December 6, with the suggestion that no royalty be paid on orders received prior to the settlement, but that there be a continuing royalty of three per cent upon the sales price of orders received thereafter. This proposal was conditioned upon "securing back from Thomasma" his stock in Precision, concerning which the letter stated, "You may be able to be of help to us in this connection." On the same day, before receiving Hobbs' letter, Fidler notified Hobbs that the proposal was satisfactory to plaintiff, but suggested that the royalty proposal should come from Precision and Snap-On. After receiving Hobbs' letter Fidler notified Hobbs that Automotive wanted a ten per cent royalty.

Further consultations and correspondence were had by counsel for the various parties without agreement, and on December 17, Alberts, on behalf of Snap-On, notified Fidler that Larson could not settle with Automotive without Snap-On's cooperation, and that no further concessions could be made by the latter regardless of the outcome of the controversy. Thereupon, on the following day, Zimmerman served notice of taking depositions, coupled with a demand that Larson furnish his attorneys with a complete transcript of Larson's interference testimony, which had not been fully transcribed by the reporter who was employed by Alberts. Alberts then, by letter to Hobbs, attempted to substitute Hobbs as Larson's attorney in the interference proceeding, but did not

withdraw his own appearance in the Patent Office. In this letter he also advised Hobbs that Snap-On would require Larson to furnish tangible security to indemnify it before Snap-On would reassign the Larson application to Larson. On December 19, Hobbs declined to accept the appointment and notified Alberts that his demand for security from Larson was unreasonable.

On that day Automotive's attorney, by letter to Alberts, stated that the latter and his client Johnson, president of Snap-On, should realize that they were holding up the issuance of the Zimmerman patent without the slightest justification. That letter further stated:

> "In the second place, we do not believe that you can divest yourself of all responsibility in this matter. You are still the attorney of record. Snap-On still has legal title to the Larson application in interference. As attorney for Snap-On and Larson, you took depositions on behalf of Larson. You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on behalf of Automotive. You employed the reporter. Part of the transcript is not reported correctly or fully. The reporter delayed in transcribing part of the record. You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed. • • •"

This portion of the letter is relied upon by the defendants as implying a threat to prosecute, in order to gain an unfair advantage. It must be remembered, however, that as early as November 29, 1940, Larson and Carlsen had instructed their attorney to concede priority, and that offer was submitted to plaintiff as early as December 2. The proposal then made by Hobbs for Larson was acceptable to plaintiff, but in as much as the Larson application had been assigned to Snap-On, its consent was necessary. If given it would have settled the interference, but it was not given to plaintiff until December 24, and the delay was caused by Snap-On, and the reason therefor is quite well expressed in a letter from Alberts to his client on December 19, wherein he stated, "• • • My effort

all along has been to stiffen Larson's position so that he would not leave Snap-On • • • holding the bag—contract or no contract • • •. I would like for you to submit to your general counsel the entire matter insofar as it relates to a possible suit for conspiracy with Larson to defraud Ammco. (Plaintiff.)"

On that same day Alberts replied to the letter from plaintiff's attorney and characterized it as threatening in its nature, and charged plaintiff's attorney with having used duress in his cross-examination of Larson. (This was three weeks after he had heard Larson's confession.) He further stated:

"• • • The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28, 1940. That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson. • • •

"• • • If everything Mr. Thomasma has said could or will be proved, even then Larson is entitled to be defended by an attorney whether such be myself or some other attorney. • • •

"• • • I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker. Present corroboration of the competent type with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any further phase of the case for the present."

The next day, December 20, 1940, Hobbs, Alberts and plaintiff's attorneys conferred and agreed on terms of settlement. At Albert's request, separate agreements were entered into between Snap-On, Precision and Larson; Automotive, Precision and Larson; and Automotive and Snap-On. These were reduced to writing, executed, and exchanged by the attorneys on December 24, 1940. Neither plaintiff nor its attorneys had knowledge of the contents of the Snap-On-Precision-Larson agreement until about April 14, 1943. The substance of these contracts, in so far as they are here material, is as follows:

1. By the Automotive and Precision-Larson contract, Larson conceded priority to Zimmerman as to

the common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was to be assigned to Automotive. Precision paid $500 to Automotive. Precision and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. Automotive gave Precision the right to complete unfilled orders on hand from Snap-On to the extent of approximately 6,000 wrenches with a royalty to be paid on the excess, released Precision and Larson and their customers from liability for infringement by reason of the manufacture and use of previously sold wrenches, and gave Precision and Larson a general release as to all civil damages.

2. By the Automotive and Snap-On contract, Snap-On agreed to reassign the Larson application to Precision, and acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. Automotive gave to Snap-On the right to sell said approximately 6,000 wrenches then on order, released Snap-On and its customers from all liability for infringement by reason of the sale of previously sold wrenches, and gave to Snap-On a general release as to all civil damages.

3. By the agreement between Snap-On on the one hand, and Larson and Precision on the other, Snap-On reassigned to Larson and Precision whatever title Snap-On had to the Larson application, and Precision agreed to manufacture and deliver to Snap-On the approximately 6,000 wrenches then on order. Larson assigned outright to Snap-On a joint application filed by Larson and Walraven and not involved here. Snap-On advanced to Precision the $500, which was paid to Automotive. Snap-On assented to the Automotive and Precision-Larson agreement and agreed to the cancellation of an agreement between it and Precision dated September 28, 1938, by virtue of which Snap-On had obtained title to the Larson application.

The $500 which Snap-On turned over to Precision was paid out of the defense fund which Snap-On was withholding under their agreement of September 28, 1938. It was paid by Precision to Automotive, who in turn paid it to Thomasma for his Precision stock, which stock was then

delivered to Precision by Automotive, who retained no part of the $500. This was done pursuant to an understanding of all the parties, and at the request of Hobbs. We gather from the record that this was due to the ill feeling between Thomasma and the defendants and the further fact that the former had tried to sell his stock to plaintiff's president on November 3, 1940. However that may be, plaintiff agreed to use its good offices to that end and was successful.

In conformity with these agreements, the Larson application was duly assigned to Automotive on December 20, 1940. Later the latter added further claims which were allowed, and the Larson patent was issued to Automotive.

Both Snap-On and Precision operated under the interference settlement agreements as to the orders therein referred to. As soon as those orders were filled, Precision began to furnish, and Snap-On began to sell, a modified wrench for which Alberts had prepared a patent application for Larson on December 26, 1940, on which day Larson executed it at Snap-On's place of business. On January 16, 1941, Snap-On entered into a new agreement with Precision under which the latter was to manufacture the new wrench for Snap-On. That is the wrench which is here charged with infringement. Snap-On has continued to deal with Larson and Precision, and Alberts has continued to represent Larson in connection with other patent applications.

On March 10, 1943, all issues had been joined with respect to the complaint, petition for declaratory judgment and the counterclaims thereunder. On March 27, 1943, at a pre-trial examination of Larson in open court, as requested by plaintiff, Larson admitted his perjury and thereupon Automotive's counsel called the court's attention to that fact. That admission, aside from the filing of the joint amended, unverified answer of the defendants on February 8, 1943, and Snap-On's third amended petition for a declaratory judgment on March 1, 1943, verified by Alberts, was the only confirmatory evidence of Thomasma's story of which plaintiff had knowledge. When on February 8, the defendants jointly filed their amended answer, it was notice to the world that Larson had committed perjury. Likewise, three weeks later, Snap-On gave the same notice when Alberts filed its amended verified petition. Prior to those dates, plaintiff and its attorneys, of course, were mor-

ally certain that Thomasma's story was true, but they did not think that the uncorroborated evidence of their traitorous former employee would be accepted as against Larson's nine witnesses. This was Albert's opinion, as expressed in his letter to plaintiff's attorneys on December 19, and also the opinion of those disinterested persons whom plaintiff's counsel consulted. Under these circumstances we think it is clear that no duty devolved upon plaintiff to report its information to either the District Attorney or the Patent Office. Certainly there was no active concealment, or misrepresentation, and after the court was informed, no duty rested upon plaintiff or its attorneys except to testify truthfully when called upon by the authorities.

It is elemental that we are bound by the material facts as found by the District Court, if they are supported by substantial evidence, otherwise we are not bound by them. The facts found by the court, with but very few exceptions, are exact copies of those requested by the defendants, and many of them are not findings of facts. The court did not find that, on or before the contracts and assignment were executed, plaintiff or its attorneys knew that Larson's proofs were perjured. The defendants' requested finding No. 11 was to that effect, but the court's finding No. 11 substituted the word "insufficient" for the word "perjured."

Larson testified at his pre-trial examination that Hobbs, his own attorney, told Carlsen and himself that Fidler had told Hobbs before December 20, 1940, that if the contract was not signed Fidler would "turn loose the dogs and I would go to jail." Hobbs emphatically denied this statement and denied that he had made any threat of his own or any one else to Larson, Carlsen, Precision, Alberts or Snap-On. Moreover, Fidler and Lindsey testified that neither of them had ever made any threats to Hobbs or to any one else. Larson said Hobbs was the only one who gave him any information concerning threats and charges of perjury, and Carlsen said that all of his dealings with respect to the settlement were between himself, Larson and Hobbs, and Alberts was not in the picture. There are conflicts in the evidence with respect to this phase of the case, and they cannot be reconciled so as to believe all the testimony of these three witnesses. However, the District Court informs us that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith.

Johnson, Snap-On's president, testified as to threats of prosecution made by plaintiff's attorneys. However, such threats were denied by those attorneys, and Johnson testified that neither he nor his company was coerced into signing the agreement either directly or indirectly. Moreover, Larson testified that the agreement contained somewhere near a reasonable settlement, and his attorney Hobbs said that it was a fair one, and so advised him when he signed it.

Alberts, attorney for the defendants, testified at great length with respect to practically all phases of the case. Some of his statements are quite inconsistent with others made by him. Others were categorically denied by those to whom he attributed their authorship, including Hobbs. He laid great stress upon what he interpreted as threats to prosecute Larson, which were contained in letters from plaintiff's attorney. Certainly these were not direct threats, and his interpretation of them is based purely upon inferences which we think were not warranted, and were mere products of his imagination.

The District Court did not believe the testimony of Larson, Carlsen or Alberts, or any other witness, where it contradicted Hobbs' testimony, and the latter did not disagree with the testimony of plaintiff's attorneys which related to the same facts. Some, if not all, of these first-named witnesses testified to an agreement among all the attorneys that all the evidence, incriminating or otherwise, would be destroyed. This testimony was denied emphatically by Hobbs and plaintiff's attorneys, and their denial is supported by the fact that no part of the evidence adduced was ever destroyed, and all of it is set forth in the printed record now before us, or is in the hands of the clerk of this court. Hobbs had notified plaintiff's attorneys that he desired all evidence preserved. A portion of Larson's proofs had not been transcribed and never has been, and some parts had been transcribed incorrectly. When Fidler notified Alberts of his intention to take plaintiff's proofs and of his desire to have full copies of Larson's proofs, Alberts notified his reporter of that fact, and requested him to complete his transcription and notified Fidler of that fact. They were not completed when the settlement was executed, whereupon, in compliance with Hobbs' request to preserve all evidence, Fidler notified the reporter of the settlement and requested him to deliver his transcriptions and his un-

transcribed notes to Alberts, who had employed him for the defendants. The defendants now stress this circumstance as proof of plaintiff's effort to conceal and suppress testimony. There is no merit in this contention.

In Fidler's letter to Hobbs on December 28, he said, "As to other clean-up matters that we discussed last Tuesday, I will be glad to go into the same with you whenever you are ready." Defendants urge that the words "clean-up matters" indicate a purpose to destroy the evidence. However, both Hobbs and Fidler testified that the words referred only to three matters which they had previously discussed, which were (1) a new and corrected assignment of the Larson application from Snap-On to Precision and Larson; (2) a correction in the Automotive-Precision agreement, and (3) procuring from Precision a list of the wrench orders then on hand from Snap-On. This testimony is supported not only by Hobbs' letters to Fidler on December 30, and January 4, but by the District Court's memorandum of July 12.

We are convinced that the contradicted testimony of Larson, Carlsen, Alberts and Johnson has no probative value and cannot be considered as substantial evidence in the light of this record.

The defendants further contend that the Larson application should have been a joint application by Larson and Thomasma. This record does not warrant such conclusion, and we think our conclusion in this respect is strongly supported by the facts that the application was filed on October 1, 1938, by Alberts, the attorney for Larson and Snap-On, and it was assigned to Snap-On. The defendants and Alberts were fully informed as to the contents of the Thomasma affidavit on November 28, 1940, which fully stated his connection with the Larson disclosure. The defendants continued to operate under the pending application, and raised no question as to Thomasma's joint authorship of Larson's disclosure until March 1, 1943, when Snap-On, by Alberts, filed its amended petition for a declaratory decree. This was more than three years after they had full knowledge of the contents of the Thomasma affidavit, and more than two years after Larson had secretly confessed his perjury to them.

The defendants further contend that the claims added to the Larson application after its assignment to plaintiff, which claims were subsequently allowed by the examiner,

were not within the purview of the parties' contract. The examiner is not bound by contractual limitations of the parties as to the additions or rejections of claims. Here, however, the contract is silent on the subject, and we know of no reason why proper additional claims may not be allowed to the assignee under the name of the inventor as well as to the inventor before assignment. Whether the examiner erred in allowing one or more of the additional claims, or whether any of the claims are valid are questions which are not before us on this appeal. The patent is presumed to be valid, and we hold that additional claims were not precluded by the contract of the parties. Nor did their allowance render the contract between plaintiff and the defendants an unconscionable one.

We are convinced that the findings of fact, with respect to plaintiff, are not supported by substantial evidence, and that the conclusions of law are not supported by the findings. The court's ruling in dismissing plaintiff's complaint and its supplemental complaint in the infringement suit, and its counterclaims in defendants' suit for a declaratory judgment is reversed. As to all other matters the decree is affirmed. The cause is ordered remanded for further proceedings not inconsistent with this opinion.

Endorsed: Filed June 26, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-sixth day of June, 1944, the following further proceedings were had and entered of record, to-wit:

Monday, June 26, 1944.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

Automotive Maintenance Machinery Company, *Plaintiff-Appellant,* 8392 *vs.* Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp., *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this Cause appealed from be, and the same is hereby, reversed as to the court's ruling in dismissing plaintiff's complaint and supplemental complaint in the infringement suit, and its counter claims in defendants' suit for a declaratory judgment: As to all other matters the judgment is affirmed, and this cause is hereby remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

It is further ordered that the costs of this appeal be recovered by appellant.

And afterwards, to-wit: On the eighth day of July, 1944, there was filed in the office of the Clerk of this Court, an Application for Stay of Mandate under Rule 25 of the rules of this Court, which said application is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Automotive Maintenance Machinery Company, *Plaintiff-Appellant,* *vs.* Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp., *Defendants-Appellees.*	No. 8392.

APPLICATION FOR STAY OF MANDATE UNDER RULE 25.

Now come Defendants-Appellees and make this application for stay of mandate herein under Rule 25.

Defendants-Appellees represent that the Clerk has been instructed to prepare the record herein for transmittal to the Supreme Court of the United States and a petition for a writ of certiorari is in preparation.

Wherefore, application is made that the mandate herein be stayed to and including August 15, 1944, and if the petition for a writ of certiorari is then on file in the United States Supreme Court, until disposition thereof by that Court.

Respectfully submitted,
Casper W. Ooms,
Attorney for Precision Instrument Manufacturing Company and Kenneth R. Larson.
Will Freeman,
Attorney for Snap-On Tools Corporation.

Chicago, Illinois,
July 7, 1944.
Ordered Accordingly:

United States Circuit Judge.

AFFIDAVIT OF SERVICE.

State of Illinois } ss.
County of Cook }

Casper W. Ooms being first duly sworn deposes and says that he has served this application and notice upon attorneys for Plaintiff-Appellant, by mailing two copies thereof to Davis, Lindsey, Smith & Shonts, 332 S. Michigan Avenue, Room 1901, Chicago 4, Illinois, this 7th day of July, 1944.

Casper W. Ooms.

Subscribed and sworn to before me this 7th day of July, 1944.

Clara D. Witt,
Notary Public.

(Seal)

Endorsed & Filed July 8, 1944. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the tenth day of July, 1944, the following proceedings were had and entered of record, to-wit:

Monday, July 10, 1944.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Automotive Maintenance Machinery Company, *Plaintiff-Appellant,* vs. Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp., *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

8392

On motion of counsel for appellee, it is ordered that the issuance of the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed, excepting briefs of counsel and motions and orders extending time for filing briefs, in:

Cause No. 8392.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp.,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, A. D. 1944.

(signed) Kenneth J. Carrick
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 16, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
AUG 21 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON, AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

and

BRIEF IN SUPPORT THEREOF.

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

THE DUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No.

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON, AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Precision Instrument Manufacturing Company, Kenneth R. Larson, and Snap-On Tools Corporation, respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, to review the judgment entered by that court June 26, 1944, reversing the judgment of the District Court dismissing Respondent's complaint for patent infringement because of Respondent's unclean hands (R. 1210-1224).

A Short Statement of the Case.

Respondent brought suit against Kenneth R. Larson and Precision Instrument Manufacturing Company for patent infringement and breach of contract. The contracts, entered into before any patents were issued, forbade those parties from selling certain torque wrenches and from contesting validity of patents claims not yet even drafted (R. 2-7, 914-923).

These tools are made practically exclusively for the armed services and armament program (R. 565).

Snap-On Tools Corporation, by Petition for Declaratory Judgment (R. 15-36) and Order of Consolidation (R. 88) became impleaded as a defendant in the cause, it being the sales outlet for Precision.

The suit was brought for the enforcement of three of Respondent's patents, one to Larson (R. 1148-1157) and two to Zimmerman (R. 1160-1198), all of which were involved in the Larson-Zimmerman interference, and contracts (Def. Ex. 4 and 5, R. 914-923) which were acquired by Respondent together with the application for the Larson patent in settlement of that interference after Respondent and its attorneys discovered that Larson's proofs in the interference were perjured and his claims to inventorship were false (Findings 5-16, R. 1123-1125).

Subsequent to the settlement Larson developed a torque wrench different from the one involved in the interference. Public disclosure of this wrench in commercial channels led Plaintiff to expand the claims in the Larson application. Upon issuance of the patent, Plaintiff sued petitioners for the manufacture and sale of this new wrench.

In the District Court Petitioners sought and procured a separate trial on the issue that the contracts sued upon were invalid because procured by Respondent in conceal-

ing the crime of perjury and suppressing evidence thereof in violation of Title 18, U. S. Code, secs. 250, 251 (R. 89; Answer para. 7 (b) R. 8-9, Pet. para. 30, R. 30-32).

After a trial of nine days in the District Court, in which all of the witnesses to the questioned transactions were heard in open court, the District Court delivered an oral opinion, which was subsequently withdrawn upon the *ex parte* request of Mr. Hobbs, at one time attorney for Larson and later a witness for the Respondent in the case (R. 1126).

The District Court thereupon entered Findings of Fact and Conclusions of Law and judgment ordering the complaint dismissed because of Respondent's unclean hands (R. 1121-1126, 1127).

The salient findings of the District Court, entered upon the issue of unclean hands which the District Court raised *sua sponte*, held that Larson's proofs in the interference had been perjured, that Respondent's attorneys learned that but did nothing about it until after the perjury was pleaded in this case, and that Respondent's conduct in remaining silent after securing the evidence of that perjury and "in seeking to exploit the contracts and (Larson) patent application procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands that a court of equity can not entertain the suit or any prayer for relief" on Respondent's behalf (Finding 16, R. 1125).

The salient findings are:

> 7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such inti-

mate knowledge thereof as to leave little doubt of the author's knowledge of the facts. In that statement, Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a highschool boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff, as proof of his claim.

• • • • • •

10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman.

11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his Interference proofs were insufficient.

• • • • • •

13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.

• • • • • •

16. Plaintiff's conduct in remaining silent after securing the Thomasma affidavit and in seeking to exploit the contracts and patent application procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf (R. 1123-1125).

On appeal the Circuit Court of Appeals delivered a fifteen page opinion (R. 1210-1224) confining its review to a consideration of the facts and the credibility of the witnesses heard and found by the District Court to be irreconcilable conflict, and "in direct conflict, both with testimony of other witnesses, pretrial testimony, and the many documents in evidence" (Finding 4, R. 1123). The reviewing

court, after discarding all evidence accepted by the District Court, found that there was no substantial evidence to support the findings of fact, that the conclusions of law could not therefore be supported, and that Respondent's hands were not unclean (R. 1224).

The issues yet to be tried are ordinary questions of infringement of the Larson and Zimmerman patents, and validity thereof, unless Petitioners are estopped by the disputed contracts to contest validity of those patents in spite of provisions in the contracts violating the Sherman Act.

The conclusion of the Circuit Court of Appeals was reached by a tortured argument based upon the statement made by the District Court when it withdrew its oral opinion, upon an *ex parte* application made without notice to counsel by M. K. Hobbs, the former attorney for Larson and witness for Respondent:

"MEMORANDUM.

"In this case, the court rendered an oral opinion at the closing of the arguments. At the request of M. K. Hobbs, an attorney who testified in the case, the court has re-examined the record.

"It was not the intention of the court that the statements in the opinion should be construed as implying that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct. Accordingly, the oral opinion is withdrawn and is not to be filed as a part of the record. The Court has entered written findings and conclusions. It appears from an examination of the record that the witness Hobbs did not testify falsely; that he has adhered to the rules which govern the relations existing between attorney and client and that he was not guilty of any professional misconduct or criminal act.

"IGOE,
"United States District Judge."

(R. 1126.)

This "Memorandum" was filed simultaneously with the entry of the Findings of Fact.

The Circuit Court of Appeals found this random observation of the District Court "that the witness Hobbs did not testify falsely," warrant for rejection of all evidence in conflict with Hobbs' testimony, and overthrew the Findings of Fact, saying:

> "However, the District Court informs us that Hobbs told the truth, and **it is our duty to disregard all other evidence which cannot be reconciled therewith**" (R. 1221).

The Circuit Court of Appeals thereupon, in violation of Rule 52 (a), tested the credibility of all of the witnesses against that of Hobbs, found everything contradicting Hobbs false, and completely ignored the contemporaneous documents and positive statements even of Respondent's witnesses supporting the findings.

The court then scrapped all of the findings of fact of the District Court (R. 1224).

The Court of Appeals ignored the salient facts that the Larson patent was conceived in fraud and supported by repeated fraudulent oaths of the applicant in the United States Patent Office.

The facts other than this history of the case are treated in the Brief in support of this Petition.

Opinions Below.

The opinion of the Circuit Court of Appeals appears in the Record, pp. 1210-1224, and in 143 F. 2d 332.

The oral opinion of the District Court was withdrawn from the record, and a "Memorandum" to that effect filed (R. 1126) at the time of the entry of Findings of Fact and Conclusions of Law (R. 1121-1126). The Circuit Court

of Appeals treated this "Memorandum" as an opinion superseding the explicit findings of fact filed at the same time.

Jurisdiction.

The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (Title 28, U. S. Code, Sec. 347).

The judgment of the Circuit Court of Appeals was entered June 26, 1944.

Questions Presented.

1. Where a plaintiff sues in equity to enforce a patent and a contract to estop contest of its validity, and it is established that

a. The application for the patent was filed by an alleged sole inventor (Larson) when it was clearly developed by applicant and another;

b. The applicant (Larson) thereafter repeatedly filed in the United States Patent Office false oaths as to the date of the alleged invention;

c. Applicant (Larson) and several others testified falsely in support of the false oath in a Patent Office interference;

d. Plaintiff (Respondent), an adverse party in the interference, procured documentary proof of the perjury, demanded and procured a settlement of the interference for that reason;

e. Plaintiff in the settlement procured assignment to it of the patent application of the applicant (Larson) who had testified falsely and a contract of the applicant not to contest validity of that and two other patents, none of which had been allowed or issued, and a covenant to discontinue sales of wrenches not then patented, those patents and the contract being the subject of the instant litigation;

f. Plaintiff without further aid or oath of Larson,

more than two years after the Larson application was filed, expanded the Larson application from fourteen claims to thirty-two claims;

g. Plaintiff and its agents remained wholly silent about the perjury it had discovered and employed to procure the Larson patent and the contract in restraint of trade with respect thereto, until Larson pleaded the facts in this case;

may a District Court following *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, dismiss plaintiff's complaint because plaintiff's conduct has infected its cause with unclean hands?

2. Does the public policy expressed in Criminal Code, section 146 (Title 18, U. S. C., sec. 251), requiring disclosure of knowledge of the commission of a crime, permit a District Court, in the exercise of its equitable discretion, to deny relief on the ground of unclean hands to a plaintiff (Respondent) seeking to enforce in equity a patent and a contract procured in settlement of a patent interference in which plaintiff discovered perjury by its adversaries and employed knowledge of that perjury to procure the contested patent application and the contract?

3. In a case in which the District Court has found the testimony in irreconcilable conflict and stated in a "Memorandum" that "it appears from an examination of the record that the witness Hobbs did not testify falsely," does a Circuit Court of Appeals have a "duty to disregard all other evidence which cannot be reconciled" with that witness' testimony, and sweep aside all the findings of fact concurrently entered by the District Court?

Reasons Relied on for Allowance of the Writ.

The discretionary power of this Court to grant the writ of certiorari is invoked upon the following grounds:

1. The decision of the Circuit Court of Appeals reversing the District Court's explicit findings of unclean hands is in direct conflict with the decisions of this Court in *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240; *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. ....., and *Morton Salt Co.* v. *Suppiger Co.*, 314 U. S. 488, and presents an important question with respect to administration of the patent laws.

2. The decision of the Circuit Court of Appeals on the power of the Chancellor is in direct conflict with the rule announced by this Court in *Meredith* v. *Winter Haven*, 320 U. S. 228, 235:

> "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity * * *. Exercise of that discretion by those, as well as by other courts having equity powers, may require them to withhold their relief in furtherance of a recognized, defined public policy."

3. The decision of the Circuit Court of Appeals, employing a remark in a "Memorandum" of the District Court on the credibility of one witness as a mandate "to disregard all other evidence which cannot be reconciled" with his testimony, is in direct conflict with the rule announced by the Eighth Circuit Court of Appeals in *United States* v. *Flower*, 108 F. 2d 298, 301; and *American Ins. Co.* v. *Scheufler*, 129 F. 2d 143, 146; and by this Court in *Stone* v. *United States*, 164 U. S. 380, 383, and *Loeb* v. *Trustees of Columbia Tp.*, 179 U. S. 472, 483, that a reviewing court is "not at liberty to refer to the opinion (of the trial court) for the purpose of eking out, con-

trolling, or modifying the scope of the findings." (164 U. S. 383.)

4. The decision of the Circuit Court of Appeals announces a construction of Federal Rule of Civil Procedure 52 (a) which directly conflicts with the terms of the rule and numerous decisions of other Circuit Courts of Appeals, and decides an important question of federal law which has not been and should be settled by this Court.

WHEREFORE, your Petitioners respectfully pray that a Writ of Certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit in this cause.

Respectfully submitted,

WILL FREEMAN,

CASPER W. OOMS,
Counsel for Petitioners

Chicago, August 14, 1944.

IN THE

Supreme Court of the United States

October Term, 1944.

No.....

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON, AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Chancellor Was Empowered in His Discretion to Dismiss the Complaint of Plaintiff for Patent Infringement Where Plaintiff Sought to Enforce a Patent and a Contract Procured by Plaintiff from Its Adversaries in an Interference Proceeding After and Because Plaintiff Discovered Perjury in the Interference and Where Plaintiff Concealed That Perjury Until It Was Pleaded by Others in This Cause.

The doctrine of unclean hands as a ground for dismissal of a complaint in equity has been clearly set forth by this

Court in *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, 244-246, where this Court said:

"'* * * the governing principle is 'that whenever a party who, as *actor*, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him *in limine;* the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.' Pomeroy, Equity Jurisprudence, 4th ed., § 397. This Court has declared: 'It is a principle in chancery, that he who asks relief must have acted in good faith. The equitable powers of this court can never be exerted in behalf of one who has acted fraudulently or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this court the abetter of iniquity.' *Bein* v. *Heath*, 6 How. 228 247. And again: 'A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity.' *Deweese* v. *Reinhard*, 165 U. S. 386, 390.

"But courts of equity do not make the quality of suitors the test. They apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation. They do not close their doors because of plaintiff's misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication. Story, id., § 100. Pomeroy, id., § 399. They apply the maxim, not by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right

and justice. *They are not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion.*" (Emphasis ours.)

This same principle was announced and applied by this Court in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. ..... and *Morton Salt Co.* v. *Suppiger*, 314 U. S. 488, 493-494.

While those cases were all patent cases, as is the present case, the rule enforced is but part of the more extensive doctrine stated by this Court in *Meredith* v. *Winter Haven*, 320 U. S. 228, 235, that a chancellor may withhold relief in furtherance of a recognized defined public policy.

In the cause before the Court, the Chancellor dismissed the Complaint on a finding that Plaintiff and its attorneys had discovered perjury by Plaintiff's adversaries in a Patent Office Interference, and after procuring from the perjurors the patent application involved in the perjury, and a contract including estoppel to contest validity of any claims that might issue in that patent application, remained silent and failed to inform the proper officials of the perjury, as required by Criminal Code, § 146, and actually sought the aid of equity in exploiting the patent and contract (Finding 16, R. 112-5).

The Circuit Court of Appeals reversed the Chancellor on the ground that "no duty devolved upon Plaintiff to report its information to either the District Attorney or the Patent Office" (R. 1221).

Criminal Code, § 146, is not only the definition of a crime which permits criminal prosecution for its violation but is, with Criminal Code, § 145, an expression of "recognized, defined public policy" by which the Chancellor was properly guided in denying relief to the Plaintiff when Plaintiff sought in a court of equity to exploit a patent

and contract procured by its discovery and concealment of the patent applicant's perjury.

That the Facts in the Case Warranted the Chancellor's Findings and Conclusions Is Evident from the Most Cursory Review Thereof.

In November, 1937, one Thomasma, long an employee of Plaintiff, disclosed to Larson, Petitioner, Thomasma's concept of a torque wrench (R. 962).

In the fall of 1937, Larson and Thomasma together worked out a wrench (R. 219) which Thomasma testified was his "idea" (R. 316) and "his conception" (R. 323).

Subsequently, in December 1938, Larson, Thomasma and others organized Precision Instrument Manufacturing Company to make these wrenches and to supply Snap-On Tools Corporation with the wrenches (R. 221).

Petitioner Snap-On made arrangements to file a patent application for Larson, who was without funds, and took an assignment of the Larson application as security for his performance of their trial order agreement (R. 385, 386). Larson's application was filed on October 1, 1938, with 14 claims, set forth in the record (R. 907-911).

In October 1939, the Patent Office declared the Larson-Zimmerman Interference. Thereupon, Larson filed a preliminary statement under oath, setting forth false dates as to the time of his conception, reduction to practice, etc. Larson had previously filed a false oath under Patent Office Rule 93, and subsequently refiled his false preliminary statement (R. 392-393, 396).

Plaintiff discharged Thomasma in June, 1939, because of his refusal to explain his connection with Precision Instrument Manufacturing Company (R. 494-496). Plaintiff first learned of Larson's patent application by the

declaration of the interference and Plaintiff's attorney immediately expressed doubts that the interference would go forward because of Larson's hopeless situation in the interference (Pl. Exhs. 60, 61, R. 903-904; Def. Exhs. 84, 85, R. 1080-1082).

As soon as Plaintiff's attorney saw Larson's sworn preliminary statement claiming invention in 1934, he expressed positive disbelief, which was corroborated by the doubts of his Washington associate (Def. Exhs. 87, 88, R. 1084-1086). Plaintiff immediately ordered an investigation by private detectives (R. 747, 748). What they learned in the first seven weeks of their investigation is detailed in memoranda of Plaintiff's attorney (Def. Exh. 13, R. 928-934).

It was clear throughout the case and found expressly by the District Court (Finding 10, R. 1124) that Larson would have prevailed in the interference if his claimed dates and the proofs taken by deposition in support thereof were true.

For one week in October, 1940, Larson's proofs were taken under oath to support his falsely claimed dates of invention in 1934. In these proofs he completely suppressed any mention of his collaborator, Thomasma (Def. Physical Exh. 10).

Larson offered Interference Exhibit 27 (here Pl. Exh. 56, R. 897) as a signed drawing made by a high school boy and dated May, 1936, in support of his early work. That drawing was actually made by Thomasma in 1938, while still employed by Plaintiff (R. 218, 321).

Before Larson's proofs closed, Thomasma sought out Plaintiff and had a Sunday evening meeting with Plaintiff's president and attorney at the latter's home, where he disclosed the facts (Finding 6, R. 1123). Plaintiff's president reviews this meeting in a letter to his attorney

(Def. Exh. 11, R. 923-928). Within the following week Thomasma dictated, at Plaintiff's attorney's home, an affidavit of twenty thousand words (Def. Exh. 21, R. 952-1012) of detailed facts about Larson's claimed invention, showing positive knowledge of every detail of the disputed facts and disclosing Thomasma's authorship of the falsely dated drawing. This remarkable document was initialed and sealed on each of its eighty-three pages (Finding 7, R. 1123).

Thereupon, Plaintiff's attorney called Harry C. Alberts, Larson's attorney in the interference, and disclosed Plaintiff's possession of the facts (R. 761-765). Larson's attorney confronted Larson with the disclosure and Larson employed another attorney, M. K. Hobbs.

A month of negotiations followed in which Plaintiff presented Larson's attorney with proposed contracts drawn by Plaintiff reciting—in the face of Larson's false proofs to the contrary—that "Zimmerman is the prior inventor of the subject matter involved in" the interference (Def. Exh. 14, R. 935). Plaintiff's attorney laid down a twenty-four hour ultimatum for settlement (R. 903). Larson's attorney, Hobbs, then withdrew and Larson returned to Alberts, the attorney who had taken his interference proofs. Plaintiff's attorney thereupon charged attorney Alberts as follows:

> "You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed. You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman patent without the slightest justification. . . ." (R. 1049.)

In explanation of the last sentence in the letter, Plaintiff's attorney testified:

> "Q. In your pretrial deposition, when you were asked with respect to the holding up of the issue of the Zimmerman patent without the slightest justification, and I now read from page 9 of your pretrial deposition:
>
> 'Question: You felt on December 19, 1940 that Mr. Johnson and Mr. Alberts were holding up the issue of the Zimmerman patent without any justification, did you not?'
>
> and you answered:
>
> 'Answer: Well, these people had already come to me and wanted to settle the Interference on the basis proposed by Mr. Hobbs, and when negotiations after all that time had gone forward and then broken off we felt that it was a scheme for delay because at that time wrenches of the type involved in the Interference were being manufactured by the Precision crowd,'
>
> and I then asked you the following question:
>
> 'Question: Merely the falling off or breaking of negotiations for settlement would not justify you in saying to Mr. Alberts and Mr. Johnson that they were holding up the issue of the Zimmerman patent without any justification, would it?'—
>
> and you answered:
>
> 'Answer: Well, after they had told us Zimmerman was the prior inventor and we hadn't yet received a concession of priority, it certainly would.'" (R. 822-823.)

thus disclosing positive knowledge of Larson's admission that his proofs of priority to Zimmerman were false.

Within a day or two after the charges contained in Plaintiff's attorney's letter, Hobbs resumed representation of Larson. The settlement was then promptly concluded, whereby Plaintiff took an assignment of Larson's patent

application (which had been repeatedly supported by false oaths in the Patent Office and the perjured interference testimony) and contracts by all of the petitioners that they would not thereafter

> "directly or indirectly, infringe any of the claims (now or hereafter allowed) of said Larson application, * * *
> "* * * directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications." (R. 917, 921, 922.)

The contracts (Def. Exh. 4 and 5) also contain covenants by petitioners not to make the wrenches, then still unpatented, after six thousand (6,000) on order had been delivered (R. 916-917, 921), a provision obviously in restraint of trade.

The settlement necessarily required Larson to execute a formal concession of priority to Plaintiff's inventor, Zimmerman, which, in the face of Larson's proofs, constituted his written admission that those proofs were false.

Thus, when Plaintiff took the concession from Larson and filed it in the Patent Office, Plaintiff must have recognized that Larson's proofs were false, or it could not have filed the contradictory concession without practicing a fraud upon the Patent Office by holding out Plaintiff's inventor as being the lawful inventor.

Immediately after conclusion of the settlement, Plaintiff's attorney wrote to the reporter who had taken the perjured proofs, instructing him immediately to deliver to Larson's attorney, Alberts; who had employed the reporter, "each and every notebook" employed by the reporter in reporting the perjured testimony and "the original copy of such testimony" (Pl. Exh. 16, R. 845). The perjured testimony (Def. Physical Exh. 10) has never been fully transcribed.

Larson's perjury first became publicly known when Petitioners pleaded the facts in this case, two years after the settlement was concluded.

Thomasma was, after this settlement, a frequent and intimate correspondent of Plaintiff's attorney and president (R. 949, 1002, 1021-1036) and two weeks after this suit was filed was paid Two Hundred Dollars ($200.00) and given a second hand machine tool (R. 338-340, Def. Exh. 27, R. 1020).

Even if it be assumed that Hobbs' testimony is to be accepted without any qualification and all of the evidence in conflict therewith is to be discarded, as the Circuit Court of Appeals did, although unwarranted both by the evidence itself and by law in so doing, there is still ample substantial evidence to support the findings of the District Court.

Thus the recitals in the settlement contracts, the letter of plaintiff's Counsel charging Larson's attorney with holding up the issuance of Zimmerman's patents without the "slightest justification", and plaintiff's attorney's testimonial admission that

> "* * * they had told us Zimmerman was the prior inventor * * *"

show irrebuttably positive knowledge of Larson's perjury before the settlement was effected.

The Circuit Court of Appeals said that prior to those dates (meaning early 1943 when the perjury was pleaded by Petitioners)

> "* * * plaintiff and its attorneys, of course were morally certain that Thomasma's story was true, but they did not think the uncorroborated evidence of their traitorous former employee would be accepted against Larson's nine witnesses." (R. 1220-1.)

If plaintiff and its attorneys were "morally certain" that Thomasma's story was true, as the Circuit Court of

Appeals said, then adding to that moral certainty the proposed agreement in December of 1940, Plaintiff's being informed by Larson's attorney that "Zimmerman was the prior inventor," and Plaintiff's letter telling Larson's attorney that he was holding up the issue of the Zimmerman patent without the slightest justification—then in 1940 and not in 1943 there was enough proof to "convince any lawyer of normal perc ption" that Larson's interference proofs were perjured.

It is obvious that the conduct of Plaintiff in employing the perjury of its adversaries to procure a patent application which Plaintiff subsequently, and more than two years after it was filed, expanded from fourteen to thirty-two claims, and a contract placing substantial commercial restraints upon petitioners, warranted the District Court in dismissing a complaint brought to enforce the expanded patent and contracts so procured.

II.

The Circuit Court of Appeals' Ruling Rejecting Express Findings of the District Court and the Evidence in Support Thereof, Because of an Observation in a "Memorandum" of the District Court, Conflicts With a Rule of Law, Long Enforced by This Court, That Findings Cannot Be Controlled by an Opinion.

The Circuit Court of Appeals rejected the express findings of the District Court and all evidence in support thereof because of its complete misapprehension of the relative place in judicial proceedings of findings and opinions by the trial court.

This Court, in 1896, in *Stone* v. *United States*, 164 U. S. 380, 383, in a civil suit brought to recover the value of property destroyed by Indians, found that a finding of fact

could not be modified by the opinion of the trial court, stating:

> "We are not at liberty to refer to the opinion for the purpose of eking out, controlling, or modifying the scope of the findings."

This rule that the findings of fact are the controlling determination of the trial court and are not subject to qualification or control by an opinion has been the established rule of the federal courts. *United States* v. *Flower*, 108 F. (2d) 298, 301; and *American Ins. Co.* v. *Schaufler*, 129 F. (2d) 143, 146 (both in the Eighth Circuit).

In the former case the appellant relied upon certain statements from the trial judge's opinion in direct conflict with the findings, and the Circuit Court of Appeals held:

> "It is not the opinion that controls, however, but the findings of fact made by the trial judge." (p. 301)

In fact, in cases where the findings of fact were inadequate to support a judgment, the courts have uniformly refused to permit them to be supplemented by facts in the opinion. *Leverett Saltonstall* v. *Joseph Birtwell*, 150 U. S. 417, 419.

The Circuit Court of Appeals in this case was not in a position of having an *opinion* conflicting with express findings of fact. The Court had merely a brief memorandum by the trial judge, made on the *ex parte* request of a witness, Hobbs, with respect to that witness' testimony and without any reference to the merits of the case except that "The Court has entered written findings and conclusions." Thus, the only record of the District Court's determination of the merits of the case is that expressed in the Findings of Fact and Conclusions of Law.

The Court then withdrew his oral opinion which had dealt with the merits of the case. That opinion apparently implied that Hobbs had "wilfully given false testimony"

and the District Court in his memorandum stated that "It appears from an examination of the record that the witness Hobbs did not testify falsely;" (R. 1126). Upon this remark the Circuit Court of Appeals found it to be its "*duty to disregard all other evidence which cannot be reconciled*" with the testimony of Hobbs (R. 1221).

The Circuit Court of Appeals completely misapprehended its function and power in this situation in employing a random observation as to a witness to overthrow the findings of the District Court and the District Court's judgment upon the credibility of the witnesses, whose testimony the District Court had found to be "in irreconcilable conflict" (Finding 10, R. 1124; Finding 4, R. 1123).

III.

The Decision of the Circuit Court of Appeals Announces a Construction of Federal Rule of Civil Procedure 52(a) Which Directly Conflicts With the Terms of the Rule and Numerous Decisions of Other Circuit Courts of Appeals and Decides an Important Question of Federal Law Which Has Not Been and Should Be Settled by This Court.

The Circuit Court of Appeals, in its review of this case, completely disregarded that provision of Federal Rule 52(a), "Findings of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Trial Court to judge of the credibility of the witnesses".

The scope of review available in an equity case under this rule has been the subject of scores of conflicting decisions.

In the earlier case of *Webb* v. *Frisch*, 111 F. (2d) 887, 888, the Seventh Circuit Court of Appeals observed:

"We cannot say that a finding of fact of prior use

is 'clearly erroneous' merely because we might have entertained some doubt about the quantum of evidence."

In *Manning* v. *Gagne*, 108 F. (2d) 718, 720, the First Circuit Court of Appeals said:

"We are not called upon here to decide whether there was substantial evidence warranting findings by the judge different from those which he made, but only whether his findings are clearly erroneous within Rule 52(a) * * *"

In *Kuhn* v. *Princess Lida of Thurn and Taxis*, 119 F. (2d) 704, 705, the Third Circuit Court of Appeals said of this rule:

"So long, therefore as a finding of fact is supported by evidence and is not clearly erroneous, it is to be accepted on appeal as verity;"

This idea also finds expression in *Andrew Jergens Co.* v. *Conner*, Sixth Circuit Court of Appeals, 125 F. (2d) 686, 689, where the court held that the findings were conclusive upon it:

"* * * no matter how convincing the argument, that upon the evidence the findings should have been different, unless there is no substantial evidence to support them."

In *Anglo-California National Bank* v. *Lazard*, Ninth Circuit Court of Appeals, 106 F. (2d) 693, 703 (cert. den., 308 U. S. 624, 84 L. ed. 521, 60 S. Ct. 379) the court, after concluding that there was substantial evidence to support the findings, observed that—

"the weight to be given to the evidence was for the trial court and not for this court."

In this case the Circuit Court of Appeals not only did set aside all of the findings of the District Court but it did so upon a rejection of evidence accepted by the District

Court and found by the Circuit Court of Appeals not to be reconciled with the evidence of one Hobbs. The Circuit Court of Appeals thus gave no regard to the trial court's opportunity "to judge of the credibility of the witnesses" and reached its own conclusion that the findings of fact were erroneous and unsupported by substantial evidence by weighing the testimony of the respective witnesses. The Circuit Court of Appeals itself found "conflicts in the evidence" which "cannot be reconciled so as to believe all the testimony of these three witnesses" (R. 1221).

The manner in which the Circuit Court of Appeals has applied the provision of this rule is in direct conflict with the express terms of the rule and in express conflict with its own application of the rule in *Webb* v. *Frisch*, 111 F. (2d) 887, 888.

The question under Rule 52(a) as to the power of a Circuit Court of Appeals to substitute its judgment of the credibility of the witnesses in a case in which all the testimony was taken by the District Court, and reported by the District Court as in "irreconcilable conflict", is an important question of federal procedural law which this Court has not decided and should decide.

Respectfully submitted,

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

Chicago, Illinois,
August 14, 1944.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON, AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

REPLY TO RESPONDENT'S BRIEF.

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

THE DUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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vs.

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Respondent.

REPLY TO RESPONDENT'S BRIEF.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Case Is One of Public Interest.

Respondent first challenges the Petition in this cause on the ground that it involves "nothing whatever of public interest." This Court has twice within the last term pointed out that patent causes are of public interest:

> "It is the public interest which is dominant in the patent system."
>
> *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 665.

> "There are issues of great moment to the public in a patent suit."
>
> *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 323 U. S. ..... ; 61 USPQ 241.

The Question of the Duty to Report Knowledge of a Felony Is Also One of Public Interest.

The Petition also raises the question of the duty imposed upon counsel who learn of perjury in a contested matter to disclose that knowledge to the authorities under Criminal Code, sec. 146 (Title 18, U. S. Code Sec. 251), a statute never construed by this Court.

Certainly the administration of law and the policy expressed in the statutes of the United States are matters of public interest. The power of a chancellor to implement that policy by denial of relief for unclean hands is an important judicial weapon.

As said by Mr. Justice Roberts in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 323 U. S. ....., 61 USPQ 241, "No fraud is more odious than an attempt to subvert the administration of justice."

Plaintiff Did Procure the Larson Patent and Contract with Knowledge of Larson's Perjury and Did Thereafter Fail to Disclose That Knowledge.

It is further certainly a matter of deep public interest that the patent presented to the chancellor for enforcement was procured in the settlement of a patent interference in which the patentee attempted to establish his priority as to the interference counts by perjured proofs—a settlement for which there was no occasion except for Respondent's discovery of that perjury.

The District Court found specifically that had Larson's proofs been true he would have established his priority by two or three years. (Finding 10, R. 1124.)

The District Court also found that the insufficiency of these proofs was known to Respondent's attorneys at the

date of the settlement of the interference. (Finding 11, R. 1124.)

Respondent quibbles about the word "insufficient." The only ground on which the proofs were ever questioned or attacked was their falsity.

When Respondent's attorney by letter assailed the attorney who had taken Larson's interference proofs, a day or two before the settlement was effected, he did so only on the ground of falsity of the proofs, stating, "that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth." (R. 1049.) Those words could only have been written by an attorney who had satisfied himself that the testimony he was discussing was false.

Furthermore, Finding 16 (R. 1125) which must be read with the other findings, finds flatly that Respondent and its attorneys failed to inform the proper officials **"of the perjury"** in the interference proceedings, a fact that clearly implies knowledge on their part of the perjury.

Respondent (Brief, p. 12) attempts to explain the settlement on the suggestion that "There was therefore a serious question of abandonment • • • and his (Larson's) proofs could have been 'insufficient' for that reason." If there was any such question it was snugly harbored in Respondent's counsel's mind, as it was never asserted against Larson and not mentioned in the negotiations for settlement or recited in the settlement agreement.

Even the Circuit Court of Appeals found that prior to the time perjury was pleaded as a defense in the case "plaintiff and its attorneys, of course, were morally certain that Thomasma's story was true, • • •." (R. 1220-1221.) The facts upon which this moral certainty was built were all before plaintiff and its attorneys when the inter-

ference settlement was effected, and were the facts which led to the settlement.

Plaintiff and its attorneys were willing to, and did, accept the benefit of those facts as a basis for demanding the application for the Larson patent in suit and the settlement contract, but they were unwilling to accept the burden of knowledge of perjury, when, in the absence of perjury there was no occasion for the settlement.

The Circuit Court of Appeals found that "under these circumstances we think it is clear that no duty devolved upon plaintiff to report its information to either the District Attorney or the Patent Office." (R. 1221.) Certainly if plaintiff and its attorneys were sufficiently morally certain of the falsity of Larson's proofs to force him out of the interference on that ground, they were possessed of sufficient knowledge to be subject to the statutory duty to inform the authorities "**of the perjury.**"

It was this willingness of plaintiff and its attorneys to employ their knowledge of Larson's perjury to procure the Larson patent application and the contract sued upon, and their unwillingness to disclose that knowledge to the authorities, that led the District Court to deny relief when the properties so acquired were brought into court for protection.

The Observation by the District Court That "Hobbs Did Not Testify Falsely" Did Not Impose On the Circuit Court of Appeals the "Duty to Disregard All Other Evidence Which Cannot Be Reconciled Therewith."

Respondent's brief complains that Petitioners do not unquestioningly accept the version of the facts employed by the Circuit Court of Appeals in its opinion, and repeatedly urges issues of the credibility of the respective witnesses in the case. (Brief, pages 4, 5, 8, 10, 15.) The

question of credibility of witnesses was for the District Court, and other than specific findings that the evidence was in irreconcilable conflict, the District Court made no findings with respect to the credibility of witnesses.

The Memorandum of the District Court stated that "the witness Hobbs did not testify falsely" (R. 1126) and from this the Circuit Court of Appeals read a command to **disregard** all other evidence which could not be reconciled with the testimony of Hobbs.

A witness may be wholly innocent of false testimony, and yet testify so inaccurately, so mistakenly, or with such poor recollection, that his testimony is wholly irreconcilable with that of other witnesses. The testimony of such other witnesses is not therefore to be rejected.

For example, in this case the witness Hobbs testified that he did not recall making a statement to petitioners' attorneys at a meeting two weeks before the trial, "Of course, we were all operating on the basis that there was perjury." (R. 627.) Such a failure of recollection as well as inaccurate or mistaken recollection would still leave the witness free of a charge of having testified falsely. It would not however rebut the evidence of other witnesses or subject a court to the "duty to disregard all other evidence" which could not be reconciled therewith.

The Observation Respecting Hobbs in the Supplemental Memorandum Was Not a Special Finding.

The Respondent has again indulged in the type of misrepresentation designed to confuse the issues. The Respondent refers to the Supplemental Memorandum of the District Court as a "special finding" and has endeavored to create the inference that the District Court was thereby passing on the credibility of the witnesses and finding that Hobbs "had told the truth." Any attorney present at the

hearings before the District Court could not conscientiously make any such statement.

This misrepresentation of the purpose of the rendition of the Supplemental Memorandum requires that we attach as an appendix hereto the transcript of the hearing before Judge Igoe on June 25, 1943 involving the settling of the findings of fact. It will be observed that there is no request from the Judge therein to any of the attorneys to submit any special finding with respect to Hobbs' credibility and that Judge Igoe expressly stated that the ex parte statement filed in behalf of Hobbs did not concern any of the parties (p. 11, *infra*).

The Supplemental Memorandum merely absolved Hobbs of any professional involvement which might have been created by Judge Igoe's original opinion, affected Hobbs and Hobbs only, and yet the Respondent by misrepresenting the purpose and intent of such Supplemental Memorandum has endeavored to change the entire course of the litigation and has unwittingly misled the Circuit Court of Appeals to take the position that Hobbs "had told the truth", that the evidence of witnesses testifying contrary to Mr. Hobbs was of no probative value and there was therefore no substantial evidence to support the findings of fact.

Respondent is correct in stating that the Circuit Court of Appeals did devote most of its opinion to an exposition of the facts. In that exposition, the Circuit Court of Appeals even came to the conclusion that plaintiff and its attorneys were morally certain of the truth of Thomasma's story, and therefore the falsity of Larson's proofs, and yet the Circuit Court of Appeals disregarded the consequent duty that developed upon plaintiff and its attorneys to inform the authorities of the perjury.

The District Court had seen and heard all of the wit-

nesses and concluded that their conduct had infected plaintiff's cause with unclean hands. The Circuit Court of Appeals and Respondent, after arrogating to themselves the District Court's function of determining credibility, brush off the finding of unclean hands as unsupported by substantial evidence. Even the evidence which the Circuit Court of Appeals accepted supported the finding.

Conclusion.

The Petition brings to this Court a case of public interest raising three questions of public importance. The Petition should be granted.

Respectfully submitted,

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

Chicago, Illinois,
September 19, 1944.



APPENDIX.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION AT CHICAGO

Automotive Maintenance Machinery Co., Plaintiff, vs. Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation, Defendants.	Civil Actior No. 4382.

Report of Proceedings had in the above entitled action, before Honorable Michael L. Igoe, Judge, on Friday, June 25, 1943, at the hour of 2:00 o'clock P. M.

Messrs. Davis, Lindsey, Smith & Shonts,
By: Harry W. Lindsey, Jr., Esq.,
Raymond E. Fidler, Esq., and
George N. Hibben, Esq.,
and
Messrs. Fyffe & Clark,
By: A. J. Smith, Esq.,
appeared on behalf of Automotive Maintenance Machinery Co.;

Casper W. Ooms, Esq.,
appeared on behalf of Precision Instrument Manufacturing Company and Kenneth R. Larson;

Messrs. Bair & Freeman,
By: Will Freeman, Esq.,
appeared on behalf of Snap-On Tools Corporation.

The Court: Mr. Lindsey submitted some suggested findings of fact and conclusions of law. You had some here the other day, Mr. Ooms, but you took them away with you.

Mr. Ooms: We had some three weeks ago, your Honor.

The Court: What did you do with them?

Mr. Ooms: We left them here, your Honor.

The Court: We don't have them. I thought you took them back.

Mr. Freeman: No. Your Honor asked for them at that time and said that you would keep them.

The Court: We have here those submitted by Mr. Lindsey's firm.

Mr. Freeman: I have a set here that you can work from until those are found, but those were left with your Honor that afternoon.

The Court: You can give me a copy of that.

I don't want to hear any more about this matter. You have submitted your suggestions and they have submitted their suggestions, and Mr. Hobbs has employed an attorney and he submitted some suggestions.

Mr. Ooms: I know nothing about that.

The Court: I will read the whole thing over and then make up my mind and let you hear from me.

Mr. Ooms: Is there any way that we can get a copy of those Mr. Hobbs served?

The Court: What?

Mr. Ooms: Of those Mr. Hobbs served?

The Court: No, he didn't serve any. He has submitted what he calls a Statement and Analysis of the Record on behalf of M. K. Hobbs, a Witness, prepared by his partner Mr. Haight and former Judge Wilkerson.

Mr. Ooms: I don't think I am interested in that.

The Court: Well, the purport of the statement is that

they do not think that we should be too much interested in Mr. Hobbs, that he was just here as a witness.

Mr. Ooms: When a party, who is not a party to the litigation, raises any issue, I don't see that the defendants are interested in it.

The Court: He doesn't raise any issues.

Mr. Ooms: I don't see that it is anything that I should disturb myself about.

The Court: No, I don't think so. I don't think it is anything that concerns Mr. Lindsey or concerns you.

Mr. Freeman: Have you had a copy of it, Mr. Lindsey?

Mr. Lindsey: No.

Mr. Ooms: Can we transmit that to you, as soon as we can prepare it?

The Court: A copy of the findings?

Mr. Ooms: A copy of the proposed findings of fact and conclusions of law.

The Court: Yes, you can. I wish you would. I thought it was left here. I looked for it, but I could not find it.

Mr. Freeman: We will get another one for you.

The Court: My recollection is that you presented it and Mr. Lindsey made the statement that he did not think that findings of fact and conclusions of law were contemplated and he kind of indicated that we were going to operate on a statement that I had made. At that time, they were handed up to me and as I remember you took them back.

Mr. Ooms: Well, we can have it sent to you this afternoon, your Honor. We will have it re-written and sent here, in exactly the same form it was, with this single change, that we have a plural in connection with their counter-claims, one of which was disposed of by the order the last time we were here, and we will just change that to the singular, and we will serve a copy of Mr. Lindsey immediately.

The Court: Has he served a copy on you of his?

Mr. Ooms: Yes.

Mr. Lindsey: Yes, a week ago.

Mr. Ooms: There is just one other thing: In your decision, your Honor, I think there is an error in transcription, on page 6.

The Court: Perhaps more than one error.

Mr. Ooms: There is a sentence, which begins in the 6th line, reading, "He could not concede that Zimmerman was entitled to priority and at the same time admit that he was guilty of perjury."

The Court: It should be deny that he was guilty of perjury and at the same time concede that Zimmerman was entitled to priority.

Mr. Ooms: I think that if the word not is put after the word time, it states what your Honor said, so that it will read, "He could not concede that Zimmerman was entitled to priority and at the same time not admit that he was guilty of perjury."

The Court: The word not should be in there.

Mr. Ooms: Yes, after the word time.

The Court: "at the same time not admit that he was guilty of perjury."

Mr. Ooms: Yes. May the decision be corrected accordingly, your Honor?

The Court: I will correct it right here.

Mr. Ooms: We will submit our findings then, sometime this afternoon, and send them to your chambers or to the clerk.

The Court: We will be around here for a while today, but I don't know how long.

The Clerk: They can leave them in chambers.

The Court: You can leave them in the Clerk's office with Mr. White's name on it.

Mr. Ooms: Thank you, your Honor.

The Court: I don't know just how long we will be here this afternoon.

Mr. Lindsey: May your Honor please, there was one other matter: At the conclusion of the trial, it was suggested that, in order to save time, we enter into a stipulation with Mr. Ooms and Mr. Freeman with respect to the Larson testimony in the Interference and the exhibits, and we have entered into that stipulation. That was with the approval of your Honor, and I would like to offer the Stipulation in evidence as Plaintiff's Exhibit No. 68, and the Interference exhibits that are referred to and identified by number in the stipulation, if your Honor please.

The Court: If you folks agree to it, I will enter the order.

Mr. Ooms: Yes, Your Honor, we have agreed to it.

The Court: Is that the order there?

Mr. Lindsey: It is just a stipulation.

The Court: All right.

Mr. Lindsey: And I think we can have just a draft order which will suffice.

The Court: And you can present that to the minute clerk's office and we will get it. He will turn it over to me.

CERTIFICATE.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

W. P. BAIR, being first duly sworn, deposes and says that he is an attorney licensed to practice before the Supreme Court of Illinois and the United States Supreme Court; that he was one of the attorneys of record for SNAP-ON TOOLS CORPORATION (petitioner herein) in the cause entitled "In the United States District Court, For the Northern District of Illinois, Eastern Division, Automotive Maintenance Machinery Co., Plaintiff, *vs.* Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation, Defendants, Civil Action No. 4382," and is familiar with the proceedings had and taken in said cause; that the above and foregoing appendix is a true, correct and complete copy of the transcript of a hearing held before Judge Igoe of the United States District Court for the Northern District of Illinois, Eastern Division on June 25, 1943; and that copies thereof were furnished to counsel for all the parties involved in the said cause.

W. P. BAIR.

Subscribed and sworn to before me this 21st day of September, 1944.

DOROTHY COPE,
Notary Public in and for the County of Cook and State of Illinois.

(SEAL)

My commission expires May 26, 1947.

CERTIFICATE OF MAGISTRY.

(Original signed copy has the original certificate of magistry annexed thereto.)

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON, AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

BRIEF FOR PETITIONERS.

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

December, 1944.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

BRIEF FOR PETITIONERS.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit in this case, reversing the District Court's judgment of unclean hands, is reported at 143 F. 2d 332 and appears in the record at pages 1210-1224.

An oral opinion was delivered by the District Court at the conclusion of the trial. At the time Findings of Fact and Conclusion of Law (R. 1121-1126) were entered, this opinion was withdrawn.

GROUNDS OF JURISDICTION.

This suit for infringement of a patent under the Patent Act (Title 35, U. S. Code, Sec. 70), was brought into this court by Writ of Certiorari granted October 16, 1944, under Section 240 of the Judicial Code (Title 28, U. S. Code, Sec. 347a).

A CONCISE STATEMENT OF THE CASE.

This suit was filed June 15, 1942.

Respondent, Automotive Maintenance Machinery Company (herein called Automotive or plaintiff) brought suit against petitioners, Kenneth R. Larson (herein called Larson) and Precision Instrument Manufacturing Company (herein called Precision) for alleged patent infringement, charging also that the accused acts constituted breach of a contract. The contract, entered into long before any of the patents issued, forbade petitioners from making and selling certain torque wrenches, and from contesting directly or indirectly validity of patent claims then not in existence (Amended Complaint R. 2-7, Contract, Def. Ex. 4, R. 914-923).

Petitioner, Snap-On Tools Corporation (herein called Snap-On), by Petition for Declaratory Judgment (R. 15-36) and Order of Consolidation (R. 88), became impleaded as a defendant in the cause. Snap-On was the sales outlet for the accused torque wrenches made by Precision on which Larson has procured patent No. 2,313,104 (R. 867-869). That patent is not here in suit.

These torque wrenches are wrenches with a visual indicator on them to show the amount of force being applied to the tool. They are made practically exclusively for the armed services and armament program (R. 565, R. 1040-1041).

The suit was brought to enforce three of Automotive's patents; one issued to Larson (R. 1148-1157) on April 14, 1942; one issued to Zimmerman (R. 1160-1182) on May 19, 1942; and a reissue patent originally issued to Zimmerman (R. 1184-1198) January 13, 1942 and reissued while the suit was pending. The three patents relate to torque

wrenches of the flexible beam type, and as applications were all involved in the Larson-Zimmerman interference.

The contracts (Def. Ex. 4 and 5, R. 914-923) which were charged to have been violated by the allegedly infringing acts were acquired by Automotive together with the application for the Larson patent in settlement of the Larson-Zimmerman interference after Automotive and its attorneys discovered that Larson's proofs in the interference were perjured and his claims to priority were false (Findings 5-16, R. 1123-1125).

Thereafter Larson produced a torque wrench (Def. Ex. 3 Phys.) different from the one (Def. Ex. 2 Phys.) involved in the interference. Compare drawings of Def. Ex. 3 (R. 867-869) with drawings of Def. Ex. 2 (R. 1148-1150). After public disclosure of this wrench in commercial channels Automotive expanded the claims in the Larson application (R. 548). Upon issuance of the patents, Automotive sued petitioners for the manufacture and sale of this new wrench (R. 69).

In the amended answer, petitioners pleaded the usual defenses of non-infringement and invalidity of the patents and, in addition, that the Larson patent and the contract sued on were void because Automotive procured the contract and Larson patent application by use of knowledge of Larson's perjury in the Larson-Zimmerman interference and by suppressing evidence of the perjury in violation of Title 18, U. S. Code, Sec. 250, 251 (Para. 7b, R. 8-9); that the contract was void because it contained restraints in violation of the Sherman Act (Title 15, U. S. Code, Sec. 1) unless sustained by valid patents (Para. 7c, R. 9) at Automotive drew patent claims "deliberately phrased in ambiguous terms to purport to embrace the Precision wrench" after procuring a specimen thereof although it "involved an entirely different principle of construction

and operation" (Para. 12, R. 10-11); and that "because of the matters alleged in Paragraphs 7b, 7c, 12, and 13 hereof, as well as other inequitable conduct", Automotive was in court with unclean hands (Para. 14, R. 11). The same matters were pleaded in Snap-On's Petition for Declaratory Judgment (Para. 30, R. 30-32), which also raised the point that the Larson patent was void because it was not issued to the true inventor (Para. 14-15, R. 21).

In the District Court petitioners procured a separate trial on the issue that the contracts sued upon were invalid and void because procured by Automotive in concealing the crime of perjury and suppressing evidence thereof in violation of Title 18, U. S. Code, Sec. 250, 251 (R. 89).

After a trial of nine days, where all of the witnesses to the questioned transactions were heard, the District Court delivered an oral opinion dismissing the case because of Automotive's unclean hands. This opinion was subsequently withdrawn as the result of the *ex parte* request made by retired District Judge James H. Wilkerson and George I. Haight, on behalf of M. K. Hobbs, a witness, and the Court filed this Memorandum (R. 1126):

"MEMORANDUM.

"In this case, the court rendered an oral opinion at the closing of the arguments. At the request of M. K. Hobbs, an attorney who testified in the case, the court has re-examined the record.

"It was not the intention of the court that the statements in the opinion should be construed as implying that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct. Accordingly, the oral opinion is withdrawn and is not to be filed as a part of the record. The Court has entered written findings and conclusions. It appears from an examination of the record that the witness Hobbs did not testify falsely; that he has adhered to the rules which govern the relations existing between attorney

and client and that he was not guilty of any professional misconduct or criminal act.

"IGOE,
"*United States District Judge.*"

Although the oral opinion of the District Court does not appear in the record, the tenor of its contents is indicated by Plaintiff's Proposed Findings 28, 30, 31, and 33 (R. 1113-1114) which Automotive presented to the District Court with exception and "in order to accord with the court's oral opinion" (R. 1116).

The District Court entered Findings of Fact and Conclusions of Law (R. 1121-1126) and Judgment ordering the complaint dismissed because of Automotive's unclean hands (R. 1127).

The only findings of the District Court were those entered upon the issue of unclean hands. This defense had been pleaded and tried on the grounds of the charges that Automotive had employed its knowledge of Larson's perjury to procure the Larson patent and contract sued upon, but the District Court on its own motion applied the defense to Automotive's failure to report the perjury.

The salient findings are (R. 1123-1125):

> 6. * * * Before Larson's testimony in the interference was concluded, Thomasma sought out plaintiff's president and revealed that he had brought the invention which was the subject matter of the interference to Larson.
>
> 7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt of the author's knowledge of the facts. In that statement,

Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a highschool boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff, as proof of his claim.

10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman.

11. The proofs established that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his Interference proofs were insufficient.

13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.

16. Plaintiff's conduct in remaining silent after securing the Thomasma affidavit and in seeking to exploit the contracts and patent application procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf (R. 1123-1125).

On appeal the Circuit Court of Appeals delivered a fifteen page opinion (R. 1210-1224) confining its review to a consideration of its own version of the facts and the credibility of the witnesses heard and found by the District Court to be in irreconcilable conflict, and "in direct conflict, both with testimony of other witnesses, pretrial testimony, and the many documents in evidence" (Finding 4,

R. 1123). The reviewing court discarded the evidence accepted by the District Court, found that there was no substantial evidence to support the findings of fact, that the conclusions of law were not therefore supported (R. 1224).

The issues yet to be tried if the case is remanded to the District Court for trial, are ordinary questions of infringement of the Larson and Zimmerman patents, and validity thereof, unless the disputed contracts estop petitioners from questioning validity of those patents in spite of provisions in the contracts violating the Sherman Act (Para. 3, Def. Ex. 4, R. 916-917; Para. 2, Def. Ex. 5, R. 920-921).

The conclusion of the Circuit Court of Appeals was reached by a tortured argument based upon the "Memorandum" filed by the District Court when its oral opinion was withdrawn upon an *ex parte* application made without notice to counsel.

The Circuit Court of Appeals found the random observation of the District Court "that the witness Hobbs did not testify falsely," warrant for rejection of all evidence in conflict with Hobbs' testimony, and overthrew the Findings of Fact, saying:

> "However, the District Court informs us that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith" (R. 1221).

The Circuit Court of Appeals thereupon tested the credibility of all of the witnesses against that of Hobbs, found everything contradicting Hobbs false, and completely ignored the contemporaneous documents and positive statements even of Automotive's witnesses supporting the findings (R. 1224).

A Brief Statement of the Facts Upon Which the District Court Found Unclean Hands.

In 1937 Automotive was manufacturing and selling torque wrenches like Def. Ex. 1. These were the inventions of Zimmerman whose patents issued in 1942, more than four years after the applications were filed and shortly before this suit was filed (R. 1160-1198).

In November 1937, one Thomasma, long an employee of Automotive, disclosed to Larson, Thomasma's concept of a torque wrench (R. 962). Thomasma had worked with Zimmerman while in Plaintiff's employ to June 1939 on torque wrenches (R. 312, 313).

Larson and Thomasma together worked out a wrench (R. 219) which Thomasma testified was his "idea" and his "conception" (R. 316, 323).

Wrenches were made in the fall of 1937 and are in evidence as those marked Nos. 7, 10, and 11 on the panel of wrenches (Def. Ex. 8, R. 114, 115). Thomasma, who was then employed by Automotive, worked with Larson "on the development of the wrench" (R. 218) and "helped make it" (R. 315).

Thomasma's own version of his part in this enterprise is set out at length in the Thomasma affidavit, procured by Automotive and used by it to effect the settlement of the Larson-Zimmerman Interference (Def. Ex. 21, R. 952-1012).

After unsuccessful efforts of Larson to interest distributors in his wrench, he made arrangements with Snap-On to sell the wrenches (R. 997-998).

In December 1938, Larson, Thomasma and one Carlsen organized petitioner corporation, Precision, to make these wrenches on contract to supply Snap-On (R. 221). Manufacture was started in January 1939 of wrenches like Def. Ex. 2, Phys. Larson and Thomasma were each given three

hundred shares of stock in Precision for some small tools and "their invention" (R. 135).

Thomasma's connection with Precision was concealed from Snap-On, in part, by misspelling his name in the corporation papers (R. 131, 327, 361, 494, 495, 1009).

Snap-On made arrangements to file a patent application for Larson, who was without funds, and took an assignment of the Larson application as security for performance of their trial order agreement, a customary practice with Snap-On (R. 385, 386).

Larson's application was filed October 1, 1938, with fourteen narrow claims, which are set forth in the record (R. 907-911).

Larson Files False Oaths in the Patent Office and Commits Perjury.

In support of his patent application Larson filed several false oaths:

1. His oath of sole inventorship on a wrench that was the product of his joint work with Thomasma (R. 323, 462, 978, 1002).

2. An affidavit fixing his date of conception as July 1, 1934, and the making of patterns July 15, 1934 (R. 392, 393).

3. His Preliminary Statement for the Larson-Zimmerman interference, setting forth the following dates shown compared with those of Zimmerman, as reported to Automotive by its counsel (R. 1084):

Larson		Zimmerman
July 15, 1934	Conception	May 28, 1937
Sept. 12, 1934	Disclosure	May 28, 1937
May 20, 1936	Drawing	May 28, 1937
Sept. 20, 1938	Description	Sept. 10, 1937
Sept. 10, 1934	Reduction to Practice	Aug. 28, 1937
Oct. 1, 1938	Filed	Nov. 22, 1937

4. A second preliminary statement setting forth the same dates (R. 396).

Subsequently Larson's testimony, with that of a number of other witnesses, was taken in support of these false dates (Depositions, Phys. Exh. 10). Discovery of the falsity of these dates and the perjured testimony by Automotive through its former employe and detectives' investigations led Automotive to inform Snap-On and resulted in settlement of the Larson-Zimmerman interference (R. 564).

Automotive Investigates Precision and Thomasma's Part in It.

Prior to Larson's entry into the interference Automotive had made some investigation of Precision. By November, 1939, it had a financial report (Def. Ex. 81-A, R. 1073-1075) showing one "Thomasa", an incorporator, director, and stockholder of Precision and had confirmed that "Thomasa" was actually Automotive's employee, Thomasma (R. 743-744), who had been discharged in June, 1939, for refusal to explain his connection with Precision (R. 494-498).

Shortly after declaration of the Larson-Zimmerman Interference, Fidler, Automotive's attorney, wrote Wacker, Automotive's president:

> "The facts indicate that the whole situation confronting your opponents in this interference is quite messy, and I will be somewhat surprised if they fight the matter. If they do contest the interference they surely will have a lot of explaining to do" (Def. Ex. 81; R. 1072, 1073).

A week later Fidler again wrote his client about information that "Thomasma was meeting Larson, was quite friendly with him and was carrying on somewhat mysteriously" (Def. Ex. 82; R. 1076, 1077).

Automotive's Attorney Expresses Doubt That Larson Will Contest the Interference.

On May 31, 1940, Fidler again expressed doubt that the interference would go forward (Pl. Ex. 61; R. 904) and when asked to explain (Pl. Ex. 60; R. 903-905) wrote:

> "Snap-On as well as Larson certainly knows the factual situation behind this interference and, if I am correctly informed as to that situation, I cannot see how they could hope to win" (Def. Ex. 84; R. 1080-1081).

When dates for taking testimony were set Fidler wrote Wacker:

> "As I have previously said, though, it will be a surprise to me if Larson takes testimony" (Def. Ex. 85; R. 1082).

Suspicions expressed by Fidler grew into a frank conviction of disbelief as soon as he saw Larson's preliminary statement on August 5, 1940, when he compared Larson's dates with those of Zimmerman. He wrote Wacker:

> "This preliminary statement was one of the most surprising things that I have come across in a long time. * * * I just can't believe it. * * * We know some of the extraneous facts, including the activities of your former employee, and, in the light of them, I yet cannot bring myself to believe that Larson had this wrench three or four years before you developed it" (Def. Ex. 87; R. 1084-1085).

Automotive Hires Investigators.

Fidler was convinced that if Larson's dates were established Zimmerman would be defeated in the interference and therefore asked Wacker for permission to employ investigators (R. 501-502). Investigators were hired and worked from the first week in August to the end of the year and were paid approximately $5,000 (R. 747-748; Def. Ex.

26, R. 1015-1020). One of these saw Fidler every day (R. 276) and Fidler made memoranda to record what was reported to him. The last of these is dated September 10, 1940, the first, August 12th (Def. Ex. 13; R. 928-934).

These notes disclose great detail about Precision's organization and repeated reports that "Thomasa had invented the wrench and Larson was now trying to freeze him out" (R. 928, 929); "Thomasa was formerly employed by Ammco" (Plaintiff); in the Fall of 1938 "Thomasa showed him (Larson) the wrench and Larson asked him if they couldn't work it out together. They decided to do so" (R. 930); "Mr. and Mrs. Thomasa both told Mrs. Ryan that the Precision wrench was originated in the basement of the Thomasa home at 1101 Potter Road, Park Ridge, Illinois, and that it was invented by Thomasa" (R. 930); that "Although Kamppenin was Larson's partner he knew nothing of the Precision wrench until late in 1938 when Larson and Thomasa started working on the wrench during the evenings in Larson's or Thomasa's basement. * * * Kamppenin had little to do with the wrench but knows that Larson and Thomasa did not start any work on it until 1938, * * * Larson never once mentioned the wrench to Kamppenin prior to 1938" (R. 931).

While these reports were coming to Fidler he wrote Wacker on September 20, 1940:

> "I have some very interesting things to tell you about this interference and I hope that you can get in to see me sometime within the near future so that I can tell you what it is all about" (Def. Ex. 89; R. 1087).

When notice of the taking of testimony by Larson was given Fidler on October 19th, he wrote Wacker:

> "This morning I was somewhat surprised to receive from Larson's attorney a notice of taking testimony in the above matter" (Def. Ex. 90; R. 1088).

Larson Supports His Fraudulent Application With Prejured Interference Proofs.

Larson's interference proofs were taken by deposition for about one week, beginning October 24th. The depositions were never completely transcribed. The transcribed portions are before the Court in typewritten form in three volumes as Def. Ex. 10, Phys.

Larson and several other witnesses testified. Thomasma, whose connection with Precision and Larson had led to his discharge by Automotive, did not appear as a witness and, although known by Fidler to be an active agent in Precision's organization and early work, was mentioned only casually in the interference (Int. Ex. 34, Phys.).

Larson's interference testimony was positive and detailed with respect to the making of patterns Nos. 6. 7, and 8 (Def. Ex. 7, Phys.) in the summer of 1934; the making of wrenches Nos. 9 and 10 (Def. Ex. 8, Phys.) in August or September, 1934; and a continuous and diligent course of conduct on a series of other wrenches mounted on Def. Ex. 8, Phys., in 1934 and 1935 (Lar. Dep. 118, 123, 125).

The testimony of Larson and his witnesses with respect to the course of his development was accurate except for three things: the false dates by which he sought to carry his work back of that of Zimmerman; his complete concealment of Thomasma's work in the development; and the dating of a drawing made by Thomasma and produced by Larson to establish his early work. This drawing was Int. Ex. 27, or Def. Ex. 9, Phys., poorly reproduced in the record as Pl. Ex. 56 (R. 897).

Larson identified this drawing, an accurate representation of his wrench sold commercially in 1939, as having been made by a high school boy, whom he could not identify, around Decoration Day in May, 1936 (Lar. Dep. 82-

84). He said the drawing was made at his home on a very peculiar pattern-maker's paper which he furnished, etc. (Larson Dep. 160-161).

This drawing was actually made by Thomasma in his own home in June, 1938 (R. 218, 321).

The testimony of Larson was corroborated by several other witnesses and established a case of which the District Court found:

> "If Larson's proofs in the interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman" (Finding 10, R. 1124).

During Larson's Testimony Thomasma Seeks Out Automotive and Discloses That Larson's Proofs Are Perjured.

On November 3, 1940, the day before Larson's testimony in the interference was concluded, a meeting was held at the home of Fidler, Automotive's attorney, attended by its president, Wacker, Travis, a former employe, Thomasma and his attorney, Krichiver. What occurred at that meeting, how it was arranged, and what followed, are detailed in a letter from Wacker to Fidler, written at Fidler's request, on November 5, 1940 (Def. Ex. 11; R. 924-928).

The witnesses who attended the meeting at Fidler's home recalled little of the conversation but Wacker's letter to Fidler (Def. Ex. 11; R. 924-928) fully reviews what occurred and reports that

> "You and I (Fidler and Wacker) both stated definitely that we knew the facts in the case and stated them as we knew them to be. Thomasma, Krichiver and Travis did not argue the facts as we stated them but on the contrary acquiesced and agreed" (R. 926).

The District Court found:

> "Before Larson's testimony in the interference was concluded, Thomasma sought out Plaintiff's president

and revealed that he had brought the invention which was the subject matter of the interference, to Larson" (Finding 6, R. 1123).

The Thomasma Affidavit.

On Thursday evening, November 7, Thomasma returned to Fidler's home. Neither knew the purpose of the meeting, but Mr. Fidler's secretary was there (R. 319, 755, 821).

For two long evenings, November 7 and 8, Fidler interrogated Thomasma and had his secretary record the proceedings, which fill all but the last two pages of the eighty-three page Thomasma affidavit (Def. Ex. 21; R. 952-1012) initialled and sealed on each page.

According to Fidler's testimony, he had told Thomasma nothing of the contents of the Larson interference proofs and had shown him none of the exhibits (R. 819, 974, 985, 1000) and Thomasma had not told Fidler anything of what he knew of the facts about the Larson-Precision wrench (R. 754, 821). Nevertheless, Thomasma, in two evenings, under questioning by Fidler gave answers that fill sixty pages of the printed record (R. 952-1012). This affidavit is full of detailed facts about the development of the wrench and everything that attended and followed it. Of this document the District Court made his Finding 7 (R. 1123), printed on Page 6 of this brief.

Detailed discussion of the Thomasma affidavit and its inherent demonstration of the falsity of Larson's proofs would exhaust this brief. A few salient points:

1. Thomasma disclosed the code with which the early wrenches were marked by Precision, in which the letters of the word FISKEQUANO were serially assigned to the numerals 1 to 0 (R. 953). Note this marking on the two wrenches (Int. Ex. 31, 37; Def. Ex. 104, 105). Larson, in his deposi-

tion, could not identify this code (Larson Dep. 140). Fidler so testified (R. 816).

2. Thomasma, who had never seen the interference exhibits, described the peculiar brown paper upon which the critical drawing (Int. Ex. 27; Def. Ex. 9) was made and claimed authorship of that drawing, (R. 965-967) which he said he made in June, 1938, and presented Fidler with another drawing (Pl. Ex. 57; R. 899) for the purposes of comparison (R. 322).

3. Thomasma stated that he had worked with Zimmerman, Automotive's inventor, on the torque wrenches it had been selling Snap-On and had made several suggestions for improvements, which Zimmerman rejected (R. 960, 978-979). Among other suggestions that Thomasma made which were incorporated in the Precision wrench were the use of the round spring rod as a beam; the omission of the forging between the head and the spring bar which is in the Automotive wrenches; the attachment of the spring bar directly to the head, etc. (R. 960-962).

4. Thomasma related that he brought the whole idea to Larson in November 1937 when Larson called on him at his home and demonstrated with a few pieces how the wrench would be made. From that information Larson made the pattern for the first casting, had the pattern cast and machined the casting, Thomasma working with him on the machining (R. 962-964). Thomasma made the "heads out of chrome-vanadium steel and machined the springs out of Columbia tool steel and then directed him (Larson) as to the hardening of them". Larson ground them (R. 964).

5. Thomasma watched Larson make the second set of patterns (R. 964) and because Larson was doing most of the work Thomasma made the drawing and turned it over to Larson (Def. Ex. 9; R. 964-966).

6. When Fidler showed Thomasma a photostat of the drawing (Def. Ex. 9) while the Thomasma affidavit was being dictated, Thomasma unhesitatingly identified it (R. 968), described the parts of the wrench that he had made and the work he had done in designing the instrument (R. 969, 977, 978, 971-973).

7. Although Thomasma had not seen the patterns or photographs of them, he described them meticulously (R. 973-974). Without any revelation to him of how the castings were made he told Fidler all of the facts that had been testified to in the interference depositions (R. 973-974).

Thomasma's affidavit is repleté with infinite detail showing an intimate knowledge (Fidler, R. 816) of the development work which led to the production of the Precision wrench late in 1937 and early 1938 (R. 869). Throughout the affidavit and on at least five separate occasions Thomasma affirmed Fidler's statement that Fidler had told him nothing about the testimony in the interference (R. 819, 974, 985, 1000).

The Thomasma affidavit is full of references to the companies which either furnished parts or did some work on the early wrenches and those contained hundreds of leads to independent sources from which the statements of Thomasma as to the time when the Precision wrench was first produced could have been verified. The testimony of Fidler and the investigators shows no effort to follow these leads to determine the trustworthiness of the Thomasma affidavit. The inherent evidences of the truth of that document are so overwhelming that pursuit of these independent sources of corroboration appeared unnecessary (R. 817).

Thomasma's Disclosures to Fidler Are Corroborated by Larson's Alarm and Promptly Reported to Larson's Attorney.

On November 11th, Alberts, the attorney who had conducted Larson's interference, received an anonymous telephone call that the Larson testimony in the interference was perjured (R. 475) which he immediately reported by letter to Larson and demanded an explanation (Def. Ex. 62; R. 1044). Larson immediately telephoned a denial (R. 475).

Larson and Carlsen then immediately sought out Thomasma, showed him the letter, and demanded a statement from him that he had nothing to do with the development of the Precision wrench. The information was immediately given to Fidler who inserted it in the incompleted Thomasma affidavit (R. 324, 756). Thomasma concludes that Carlsen and Larson "were very definitely scared regarding the possible consequences that might result from their past conduct" (R. 1011-1012).

November 20, 1940, Fidler called Alberts to his office and disclosed the Thomasma affidavit, the contradiction between Thomasma's statement and the Larson depositions, Thomasma's claim to authorship of the drawing which Larson had dated far in advance of Zimmerman's earliest work, and about the code marking on the wrenches (R. 761-763). He showed Alberts the Larson drawing and the drawings which he had procured as standards of comparison and pointed out similarities (R. 400-401, 764-765).

Alberts testified that he compared the drawings, was convinced they were made by the same parties, and asked that Thomasma be made available for an examination so that Alberts could bring in Johnson, Snap-On's President, to hear Thomasma directly (R. 401-402).

Alberts summarized the meeting with Fidler in a letter to Daniels of Snap-On, written two days later (Thanksgiving Day intervening) (Def. Ex. 70; R. 1050-1052). That memorandum contains the statement that Fidler insisted that if Plaintiff were compelled to take testimony to prove these facts "action for perjury would be insisted upon and the case thrown wide open" (R. 1052). Fidler denied that he made that statement and contradicted Alberts' testimony in several particulars (R. 763-765).

Fidler then consulted a handwriting expert about Thomasma's authorship of the drawing (Def. Ex. 9, Phys.) and wrote Wacker that the expert had "said that there were many items of similarity which indicated that both drawings (Int. Ex. 27 and an authentic Thomasma drawing) were made by the same man" (Def. Ex. 92, R. 1090).

The expert was Salmon (R. 646-658).

Salmon was given an enlarged reproduction of the questioned drawing on Monday (R. 807), and on Wednesday, the 27th, Salmon met Fidler in his office and examined another authentic Thomasma drawing and Salmon delivered to him "his tabulation of similarities" (Pl. Ex. 58; R. 901), which Salmon "explained that this was his work sheet, and that what was indicated on there was similarities between the two drawings. But he was not satisfied with that; * * *" (R. 807).

Wacker testified that Fidler before November 15, 1940, believed the drawing produced by Larson, had been made by Thomasma (R. 510).

On November 28th, at Alberts' request, Thomasma was produced at Fidler's office and examined orally before Fidler, Wacker, Allen (Automotive's vice-president), Johnson (Snap-On's president) and Alberts. What occurred at that meeting is disputed.

Wacker testified that Fidler examined Thomasma about the disputed drawing and the development of the Precision wrench (R. 517-518); that Johnson said "if Thomasma's story is true, this thing smells to the high heavens," and that Alberts said "if Mr. Thomasma's story was substantiated, that he would withdraw as attorney for Precision and Larson" (R. 523-524, 526-527, 528).

Johnson testified that Alberts told Fidler he would immediately get into touch with Larson and that if the facts were substantiated by Larson he would grant a concession of priority and withdraw as attorney for Larson (R. 368). Johnson added that Fidler made a statement as they were leaving,

> "He didn't feel that a concession of priority would satisfy Mr. Wacker; that Mr. Wacker had spent considerable money on tension wrench patents, and that unless a satisfactory adjustment was made with him, that he would unleash the dogs. * * * He also said that they had discussed the matter with the United States patent officials, and that it was even a matter for the United States District Attorney." (R. 368.)

Alberts testified,

> "We stood up and were about to leave, when I made the statement to Mr. Fidler that under all of the circumstances that were presented to me at that meeting, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; * * *" (R. 406.)
>
> "Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over five thousand dollars investigating Larson and his associates; that a concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and settled promptly or else Mr. Wacker would instruct him to unleash the dogs. And he continued by saying

that he had already talked to the Patent Office officials, and that if Mr. Wacker was compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense, that he certainly would have to go to the District Attorney with this matter." (R. 407-408.)

"I told him that he would hear from me or Larson, * * * Mr. Larson would have to get another attorney, and he would undoubtedly hear from his attorney." (R. 408.)

Fidler testified fully about the conference, and that when Johnson said he was there "with clean hands",

"I challenged it by reviewing the facts that I knew respecting the relationship of Snap-On and Automotive, and Snap-On and Precision and Thomasma in the picture, and I stated that in view of those circumstances I didn't feel that Snap-On was very well circumstanced in the picture or in the situation. * * *

"I mean (by Thomasma's situation in the picture) the fact that Thomasma was our prior employee, that is, Automotive's, prior employee, that he had helped develop the wrench that had been furnished to Snap-On, and he had gone to Snap-On at some time or other to service wrenches and that he, while an employee of Automotive's had gone with Larson and helped form Precision, and that he was one of the incorporators of Precision, that he was a stockholder of Precision, and Precision was now making wrenches for Snap-On, according to the information that I had, of a wrench that had been brought from Automotive to Precision and handed back that way to Snap-On, a wrench very similar to the one that we had made for Snap-On. * * *" (R. 766.)

Fidler said that Alberts said that "if this story were true * * * he would have to withdraw as attorney for Larson * * *." Johnson remarked that "if this were the true story, or something, that the whole thing smells to the high heavens" (R. 768). Fidler denied that Alberts men-

tioned a concession of priority (R. 769, 773) and denied the threatening statements attributed to him by Johnson and Alberts (R. 770) and many other statements in the testimony of the other witnesses (R. 770-774).

Larson Is Confronted by His Attorney and Gets Another Attorney.

Alberts and Johnson left the conference at Fidler's office, telephoned Larson to come to Alberts' office, and there confronted him with what they had heard. Larson refused to commit himself on the truth of Thomasma's account, procured the names of some attorneys from Alberts, and finally left the office after blurting out a confession (R. 225, 345, 409-411). On that or the following day Larson and Carlsen called on Attorney M. K. Hobbs and retained him (R. 226, 576).

Larson testified that he and Carlsen told Hobbs "the predicament we were in" (R. 226), "that there had been some false testimony given, that we wanted an attorney that would try to settle it as peacefully as possible. We didn't want to be turned over to the District Attorney for it. And he said he thought surely something could be done, and we told him if he needed any of the facts of the case he could call Mr. Alberts and he could tell him, and while we were in his office he called him" (R. 227). "Well, when we told him it was false testimony, he said that was a serious offense and we should settle it as peaceably as possible and we tried our best to not cause too much trouble" (R. 231, 235).

Carlsen corroborated this (R. 140-143, 345, 350, 352, 354, 355).

Hobbs' version of the retainer and first visit differs from that of Larson and Carlsen. He testified: "He (Larson) didn't say anything about District Attorney, or turning

over to the District Attorney. He did tell me about the drawings that he had worked on and that Thomasma had worked on" (R. 602). Hobbs knew that Larson and Carlsen were coming because just shortly before they came he "had a telephone call from Mr. Alberts."

> "Mr. Alberts told me he understood there was in this affidavit statements of Thomasma which attacked the originality, and the date of the Larson drawings which Mr. Alberts was relying upon to carry, to establish the date of Mr. Larson.
>
> "Mr. Alberts stated that he was afraid that the drawings he was relying upon were not true drawings, that they were mis-dated." (R. 577.)

Fidler was confined to his home with a back injury, so Hobbs and Edward Haight called on him there (R. 578). Hobbs testified:

> "Q. Now, in that conference was there any discussion of the Larson testimony or the Thomasma affidavit?
>
> "A. No, there wasn't. Mr. Fidler started to tell me about the testimony and about the Thomasma affidavit and I told him I wasn't interested in that, that my commission was to settle this Interference and that I didn't think it was relevant or pertinent to what I was trying to do.
>
> Q. Did Mr. Fidler say anything about perjury at all in that conference?
>
> A. No. I stopped him. What I am trying to indicate to you is, I stopped him from talking about it. I didn't want to hear the conflict of testimony." (R. 581.)

Of this meeting, another witness, Edward Haight testified:

> "* * * then we talked about settling the Interference.
>
> Mr. Fidler opened the conversation on that, as I recall it, after Mr. Hobbs had said that he knew generally the facts in connection with it. Mr. Fidler said

that he could give him more details and he started to tell us about an affidavit he had, or a statement he had, that would indicate that a drawing or drawings introduced by our client in the Interference had been faked, and Mr. Hobbs told him that he didn't think it was necessary to go into those facts, that we were there to discuss settlement of the case and there was no need to retry it or continue the trial." (R. 631.)

* * * * *

"Q. And you stated Mr. Hobbs opened the conversation by relating to Mr. Fidler the facts. What did he tell him?

A. If I said that I was in error. What Mr. Hobbs did do was to tell Mr. Fidler that he, Hobbs knew generally the facts." (R. 637.)

"Q. What did Mr. Hobbs say in cutting him off?

A. Well, in substance Mr. Hobbs said, 'I do not think it will be necessary for you to go into that, or for you to discuss that. After all, we are here to try to settle the Interference and at the outset I will say that one thing that we are willing to do is concede priority in the course of a settlement, and if we do then I don't think it is material what the evidence has been to date.' " (R. 638.)

After the meeting with Fidler, Hobbs wrote his client and enclosed a draft of a proposed letter to Fidler which opens:

"We have had two conferences with our client in this matter, the last one today. As we have indicated to you, we have not read the record nor do we propose to do so, at least at this step of the proceedings. Rather our philosophy is based upon the assumption that everybody is wrong and that the practical thing to do is to make a definite settlement of rights. We, therefore, propose the following:" (Def. Ex. 66, R. 1047.)

The offer proposed (1) Larson's concession of priority, (2) plaintiff's release to Larson and Precision of civil liability, (3) plaintiff's licensing Precision to protect its cus-

tomers, royalty of 3% to be paid only on future business, and (4) recovery of Thomasma's stock in Precision. (Def. Ex. 66, R. 1047-8.)

Fidler meanwhile had consulted Wacker, and on the same date wrote Hobbs:

> "Mr. Frederick G. Wacker, President of Automotive Maintenance Machinery Co., owner of the Zimmerman application involved in the above interference, is quite anxious to dispose of this interference situation at any early date. Mr. Wacker is particularly concerned because of the existing trade situation respecting the form of wrench in question. It is his position that, due to the nature of the competition that he must meet with respect to the wrench, he is being additionally damaged each day that the matter is delayed. * * *
>
> I took up the matter with Mr. Wacker as soon as possible after our conference last Monday, and he informed me that it would be satisfactory to terminate the interference as proposed by you—namely, by Larson conceding priority to Zimmerman and by payment to Automotive Maintenance Machinery Co. of a sum equal to a certain royalty per wrench for wrenches already made and wrenches on order and to be made in fulfillment of orders already given, and further agreement to discontinue the manufacture and sale of the wrench as soon as the orders on hand had been filled." (Pl. Ex. 29, R. 873-4.)

Alberts Withdraws as Attorney for Larson and Precision.

It is Automotive's position that although Alberts stated at the November 20 and November 28 conferences that he would withdraw as Larson's attorney if he found the facts disclosed by Thomasma to be true, Alberts never did *formally* withdraw from the interference by filing a document to that effect in the Patent Office.

On December 3, 1940, the day after Hobbs, as Larson's attorney, conferred with Fidler at his home, and four days

after Hobbs wrote Fidler of his retainer, Alberts wrote Fidler:

> "This will confirm my announcement at the conference held at your office on November 28, 1940, with Messrs. Wacker, Allen, Thomasma, and Joseph Johnson, that I would withdraw as counsel for Kenneth R. Larson in the above entitled proceedings in view of an alleged contradiction in the Larson testimony.
>
> • • • • •
>
> Accordingly, the officials of Snap-On Tools Corporation who were given a complete report on the conflictings versions stated by Thomasma at your office, on one hand, and the testimony presented by and in behalf of Larson, on the other hand, have authorized me to withdraw as counsel for Larson and the latter has been so advised as of November 28, 1940." (Def. Ex. 71, R. 1053.)

Automotive's president, Wacker, clearly understood why Alberts was withdrawing (R. 523-528).

Hobbs represented Larson and Precision throughout the settlement negotiations (except for one day) and made the settlement for them.

Lindsey Enters the Case as Automotive's Attorney and Issues a Twenty-four Hour Ultimatum.

On December 11 Wacker, impatient because of the situation, consulted Lindsey (Fidler's associate) and Fidler. Fidler had on December 9 reviewed the situation with Lindsey, who had previously heard of it only casually (R. 685-687, 779-780).

On December 11 Lindsey telephoned Hobbs, with whom he was well acquainted (R. 688). Hobbs tells of the short and abrupt conversation:

> "The part I don't remember so well, but I think my recollection is accurate, is that you said you were just getting into the matter and you had heard from Mr.

Fidler about our talks with each other and communications about a settlement; that you had a proposition to make and it was a take-it-or-leave-it 24-hour proposition.

"That made me mad and I told you I didn't care if you or your client was Hitler, you couldn't push me around and I was through negotiating if that was the basis upon which negotiations were to proceed.

"I was very angry. You were too. * * *" (R. 583-584.)

Thereupon Lindsey dictated a memorandum, entitled "Minimum Terms for Total Settlement" (Pl. Ex. 59, R. 903) which he said was never submitted to Mr. Hobbs (R. 689). The memorandum bears a handwritten note, "Tentative settlement submitted by Fidler & Lindsey to Hobbs", and has as its final term "Time for Acceptance or Rejection of Either Proposition Expires 5:00 P. M., Thursday, December 12, 1940" (R. 903).

On December 11, Alberts testified, he received a telephone call from Hobbs and another from Lindsey, relating to the proposed settlement, which he outlined in a memorandum to his client on the same day (R. 416, 419; Def. Ex. 72 and 72-A, R. 1054-1057).

The attorneys, except Alberts, met at the Union League Club on December 12, and discussed settlement (R. 584, 689-690).

On the following day they and Alberts met at Hobbs' office and discussed settlement (R. 585, 691, 780). Fidler had prepared a draft agreement (Def. Ex. 14, R. 934) and it was submitted to Alberts and Hobbs (R. 420, 537). That agreement contains a positive recital.

"Whereas, it has been determined by the parties hereto and their respective counsel that the party Zimmerman is the prior inventor of the subject matter involved in said Interference No. 77,565, as well as

all other subject matter commonly disclosed in said Zimmerman and Larson applications;" (Def. Ex. 14, R. 935.)

The agreement contained requirements that Larson and Snap-On would turn over to plaintiff two patent applications of Larson, one of which ripened into the Larson patent in suit; a covenant to discontinue the manufacture of wrenches like Def. Ex. 2 after standing orders had been filled; a covenant not to infringe any of the claims of the Larson or Zimmerman applications or patents issued thereon; a covenant not to contest directly or indirectly the validity of those claims; a transfer to plaintiff of the reserve or "defense fund" withheld by Snap-On pursuant to its agreement with Precision; and a release from plaintiff to the other parties and their customers (Def. Ex. 14, R. 934-937).

Alberts testified that he objected to the terms of the contract and offered to submit a tentative compromise, but Lindsey said, "'No', that if there is any compromise contract to be submitted he was the one that is going to be submitting it to me, and not myself to him" (R. 421). Alberts then took up the contract with Snap-On and on December 17 submitted a counter-offer (Def. Ex. 73, R. 1057-1061).

The Negotiations Blow Up, Hobbs Withdraws, and the Interference Proceedings Are About to Resume.

Upon receipt of Alberts' letter of December 17th (Def. Ex. 73) Lindsey and Fidler discussed it, but made no reply and wrote Alberts a letter (Pl. Ex. 30, R. 875), demanding a copy of the transcript of the Larson depositions, transcription of which had been held up at Hobbs' request by agreement (R. 632, 1049), and giving notice of the taking of depositions in the resumed Interference on behalf of Zimmerman on December 23rd (Def. Ex. 77, R. 1068-1069).

The witnesses were to be Raftery, the reporter who reported the Larson depositions, Schmid, an associate of Lindsey and Fidler, Fidler himself, and the wives of Larson and Carlsen. Only Fidler knew any of the facts relating to Zimmerman's work (R. 784).

The letter contains this salient paragraph:

> "Our client has informed us that it desires to prosecute this interference with all possible speed. We have advised them that they are fully justified in demanding speed in view of the situation, concerning which you are fully informed" (Pl. Ex. 30, R. 875).

Alberts sent the documents to Hobbs together with a substitute power of attorney (R. 423; Pl. Ex. 32, R. 876). Hobbs on December 18th wrote Larson and Precision withdrawing as their counsel. The letter reviews the efforts at settlement and concludes:

> "Without the settlement, Precision is in a precarious position. Between the upper millstone of Amco and nether millstone of Snap-On, the outlook for the future is not sanguine * * *" (R. 878).
>
> "We think you should give very serious consideration to whether you desire to spend any additional funds in the interference" (Pl. Ex. 33, R. 879).

On the next day Hobbs again wrote his late client, enclosing copy of a letter to Alberts (Pl. Ex. 34, R. 879-880) and says:

> "* * * I still believe that you and Precision might effect a settlement with Amco, which settlement would require a concession of priority; * * *" (Pl. Ex. 35, R. 880-881).

On December 19th Hobbs again wrote Alberts telling him of the necessity of Larson's engaging other counsel, and briefly reviewing his work since his retainer of November 28th, or 29th, when "We immediately took steps to settle that matter and its attendant charges and countercharges" (Pl. Ex. 50, R. 891).

Automotive's Attorney Writes a Final Letter and Makes the Matter Clear.

Lindsey received a copy of Alberts' letter to Hobbs of December 18 (Pl. Ex. 32) and immediately wrote Alberts a remarkable letter (Def. Ex. 68, R. 1048-1050) and "had it delivered by a messenger" (R. 695). The messenger asked to see Alberts personally, and handed him the letter (R. 424). In view of the letter's contents this is not remarkable.

The letter stated that it is the author's purpose "to make our position perfectly clear so that there will be no question about it in the future," that the depositions would be taken pursuant to the notice (served the preceding day), warned Alberts "that you can (not) divest yourself of all responsibility in this matter," charged him with instructing witnesses "at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on behalf of Automotive," with employing the reporter, with an incorrect and incomplete transcript, and then:

> "You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed. You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman patent without the slightest justification. * * *" (R. 1049)

The real reason for the letter, and a perfectly rational explanation thereof, was given by Fidler, who sat by while it was being dictated and approved it (R. 783) and testified:

> " 'Question: Merely the falling off or breaking of negotiations for setlement would not justify you in

saying to Mr. Alberts and Mr. Johnson that they were holding up the issue of the Zimmerman patent without any justification, would it?'—

"'Answer: Well, after they had told us Zimmerman was the prior inventor and we hadn't yet received a concession of priority, it certainly would.'" (R. 822-823)

Alberts immediately replied at length (Def. Ex. 76, R. 1063-1067), reviewing the temper of the negotiations so abruptly terminated, labeling the Lindsey letter "threatening accusations," "incriminating assertions," and "duress," and stating "your client has no right to threaten as I have repeatedly heard the expression from Mr. Fidler and Mr. Wacker 'to unloose the dogs' if you do not get everything you ask for" (R. 1064). Alberts reviewed the disclosures of the falsity of Larson's testimony, attacked Thomasma's credibility, disclaimed any culpability on his own and Snap-On's parts, and refused to acknowledge anything wrong with Larson's proofs (R. 1065-1067).

No reply was made to this letter.

Negotiations Are Resumed and Come to a Quick Conclusion.

The next day, December 20, Hobbs, who had withdrawn on the 18th, telephoned Alberts and asked him to meet with Hobbs, Lindsey and Fidler at Lindsey's office (R. 428-429) and Lindsey apologized for Alberts' interpretation of Lindsey's Letter (R. 699). New drafts (Def. Ex. 15, 16, R. 939-947) of contracts substantially identical with that submitted on December 13 (Def. Ex. 14) were submitted.

Finally the two contracts in suit (Def. Ex. 4 and 5) were agreed on. These eliminated the second Larson application and any reference to the so-called "defense Fund" which plaintiff had demanded. They did contain an assignment

of the Larson application involved in the interference, and later issued as the Larson patent in suit, limited license to fill orders on hand, covenants to admit validity and not infringe any of the claims in the Larson and Zimmerman applications or the patents into which they would mature, and general releases (R. 914-923).

Although the agreement with Larson and Precision (Def. Ex. 4) recited a consideration of $500.00 paid by them to plaintiff, this money actually went to pay for Thomasma's stock in Precision, which plaintiff had procured for delivery to Precision (R. 785). In addition, the parties arranged for mutual releases between Thomasma and Larson and Precision (R. 588). A list of the documents executed is contained in Fidler's letter of December 26, 1940, to Wacker, transmitting copies (Def. Ex. 95, R. 1094).

The Notebooks of the Larson Depositions Are Destroyed.

There was considerable testimony as to whether or not there was discussion of the destruction of the evidence of Larson's perjury. It was in irreconcilable conflict. The District Court made no findings thereon but it refused Plaintiff's proposed finding 37 that there was no agreement to suppress the evidence in consideration of Defendant's entering into the contract, and finding 40 that there was no suppression of the evidence (R. 1114-1115).

The only evidence that was not available at the time of the trial were two of four notebooks of the shorthand reporter Raftery, who reported the Larson depositions, and a drawing.

When Fidler and Lindsey sent notice to Alberts of resumption of the interference testimony, Raftery, the reporter employed by Alberts, was named as a witness (Def. Ex. 77; R. 1068). When the settlement was effected some-

body telephoned Raftery and excused him from the subpoena that had been served upon him (R. 661) and on December 26 Fidler wrote Raftery telling him that he was excused from responding to the subpoena and asking him to deliver to Alberts immediately "each and every notebook or other means employed by said Thomas Raftery in taking down stenographically and reporting testimony given orally on behalf of the party Larson • • •" and "the original copy of such testimony stenographically taken • • •" (Pl. Ex. 16; R. 845). A copy of that letter was sent to Hobbs, Alberts and Wacker. Wacker replied:

> "I also acknowledge receipt of your second letter of December 26 enclosing copy of your letter to Mr. Thomas Raftery, the reporter who reported Larson's testimony. Your letter together with this enclosure requires no comment on my part.
>
> "Well, now that the odor of this unpleasantness is becoming more remote it is indeed a relief to feel that it is successfully behind us." • • • (Def. Ex. 19, R. 951.)

Raftery admitted to the Court that this was the first time he had ever turned over his original notes to lawyers (R. 671).

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

The Circuit Court of Appeals erred in:

1. Reversing the District Court's judgment of dismissal on the ground of unclean hands, in direct conflict with the decisions of this Court in *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240; *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U. S. 238; *Morton Salt Co.* v. *Suppiger Co.*, 314 U. S. 488; and *Meredith* v. *Winter Haven*, 320 U. S. 228.

2. Holding that attorneys who were morally certain that perjured testimony had been taken in a Patent Office interference and who had procured a concession of priority from the perjurer and a transfer of his patent application by virtue of that knowledge, were under no duty to report the crime under Criminal Code section 146 (Title 18, U. S. Code, sec. 251).

3. Employing a remark in a "Memorandum" of the District Court on the credibility of one witness as a mandate "to disregard all other evidence which cannot be reconciled" with his testimony, in direct conflict with the rule announced by this Court in *Stone* v. *United States*, 164 U. S. 380, 383, and *Loeb* v. *Trustees of Columbia Tp.*, 179 U. S. 472, 483, that a reviewing court is "not at liberty to refer to the opinion (of the trial court) for the purpose of eking out, controlling, or modifying the scope of the findings." (164 U. S. 383)

4. Applying a construction of Federal Rule of Civil Procedure 52(a) directly conflicting with the terms of the Rule and numerous decisions of the Circuit Court of Appeals.

SUMMARY OF ARGUMENT.

1. There was no occasion for settlement of the Larson-Zimmerman Interference unless Larson's proofs, which established his unquestioned priority, were false. Plaintiff had full knowledge that those proofs were false and when Larson conceded priority there could be no question of it. Plaintiff used its knowledge of the perjury to procure the application for the Larson patent and the contract containing illegal restraints for which it sought equitable protection in this suit. Plaintiff failed to report the crime of which it had knowledge. The chancellor, therefore, properly dismissed the suit for unclean hands.

2. An attorney who learns of perjury by his adversary is under duty to report the crime both under the statute and by virtue of the canons of ethics, both of which express a public policy in furtherance of which the chancellor may refuse equitable relief.

3. The statement in the District Court's Memorandum absolving Hobbs, that Hobbs "did not testify falsely" was not a finding of fact on the credibility of the witnesses, and was not a finding that all of Hobbs' testimony was true, as the Circuit Court of Appeals thought, and the Circuit Court of Appeals was in error in rejecting the findings of fact on the assumption that it was its "duty to disregard all other evidence which cannot be reconciled" with Hobbs' testimony.

4. Federal Rule 52(a) does not permit a Circuit Court of Appeals to assume the District Court's function of weighing the credibility of witnesses and the Court of Appeals is limited in its review to the rejection of findings of fact which are "clearly erroneous" after having given due regard "to the opportunity of the trial court to judge of the credibility of the witnesses."

ARGUMENT.

I. The Chancellor Was Empowered in His Discretion to Dismiss the Complaint Where Plaintiff Sought to Enforce a Patent and a Contract Procured from Its Adversaries in an Interference Proceeding After Plaintiff Discovered Perjury in the Interference and Concealed That Perjury Until It Was Pleaded by Others in This Cause.

"There is no clearer maxim of equity than 'He who comes to equity must come with clean hands'; this is true of equity at all periods."—*Hanbury, Modern Equity* (London, 1935) p. 4.

The doctrine of unclean hands as a ground for dismissal of a complaint in equity has been so clearly set forth by this Court in *Keystone Driller Co. v. General Excavator Co.*, 290 U. S. 240, 244-246, that no restatement of the doctrine is here necessary.

The doctrine was also announced and applied by this Court in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238, 250-251, and *Morton Salt Co.* v. *Suppiger*, 314 U. S. 488, 493-494.

Those cases were all patent cases, as is the present case. The rule applied, however, is but part of the more extensive doctrine stated by this Court in *Meredith* v. *Winter Haven*, 320 U. S. 228-235, that a Chancellor may withhold relief in furtherance of a recognized defined public policy.

The doctrine finds peculiar application in patent cases because of the fact that while the litigation is conducted by individual litigants, the public is inevitably affected by the possession and assertion of patent rights. Twice within

the last term this Court has pointed out the paramount public interest resident in patent litigation, stating:

> "It is the public interest which is dominant in the patent system." (*Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 665.)

and

> "There are issues of great moment to the public in a patent suit.". (*Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238, 246.)

In the case before the Court, Plaintiff is asserting a patent which it acquired as an application from one of the Defendants, Larson, and two contracts barring all the petitioners from ever raising their voices, directly or indirectly, to question the validity of that patent.

An agreement not to contest validity of a patent is a restriction which in any guise challenges examination because of its paralyzing effect upon those most likely to contest, for their own as well as the public's interest, the maintenance of a monopoly under a patent. The restriction is in this case peculiarly suspect because of the genesis of the Larson application. That it was the result of collaboration between Larson and Thomasma, and that it was repeatedly advanced in its prolonged voyage in the Patent Office by false affidavits and perjured proofs is no longer subject to controversy in this case.

That Larson had no right to the two claims which were in controversy in the interference and that he should have conceded priority thereof to Zimmerman is conceded. The only justification Larson had for maintaining the interference was his claim to invention in 1934, which was false and supported only by his false oaths and the perjured testimony.

Plaintiff, however, did not content itself with the elimination of this impostor inventor by forcing him out of

the interference, but after discovery of his perjury procured the delivery to itself of—not a quit claim to the controverted claims, but—the entire patent application of Larson and the contracts to discontinue promptly the manufacture of a then unpatented wrench and never to "directly or indirectly contest the validity of any claim or claims * * *, that may issue upon said Zimmerman and Larson applications" (Def. Ex. 4, R. 917).

What justification was there besides the compulsion of the knowledge of Larson's perjury that warranted Plaintiff in demanding and procuring the properties offered in this case for equitable protection? Plaintiff may urge that since the Larson patent application grew out of the betrayal by Thomasma of his trust as an employee of Plaintiff, Plaintiff merely restored itself by recovering an accretion to the disloyal enterprise in which its employee, Thomasma, had enlisted Larson.

That position is clearly disclosed by Fidler's first report to Hobbs of a basis of settlement acceptable to Wacker, by which Plaintiff would also collect a royalty on each wrench already made (not then patented) and require Precision to discontinue manufacture thereof (Pl. Ex. 29, R. 873-875).

That position presumes that the Larson patent embodies patent property stolen from Plaintiff. If so, it is only because that patent incorporates the joint efforts of Thomasma and Larson, and the prosecution of the application as Larson's sole application condemns Plaintiff in this Court.

If, as Plaintiff must contend to escape that condemnation, Larson was in fact the sole inventor of the subject matter of his application, Plaintiff never had any claim thereto and the assignment thereof to Plaintiff under the

compulsion of the discovery of Larson's perjury condemns Plaintiff before this Court.

It was this insoluble dilemma which confronted the Chancellor when he dismissed the complaint on a finding that Plaintiff and its attorneys had discovered perjury by Plaintiff's adversaries in the Patent Office Interference and thereafter remained silent as to the discovered crime while procuring from Larson and his associates the suspect application and the contracts. That silence and Plaintiff's effort to procure the aid of the Chancellor in exploiting the patent subsequently procured on the Larson application and those contracts the Chancellor held constituted unclean hands.

The Circuit Court of Appeals rejected the Chancellor's findings upon its own weighing of the credibility of the witnesses, although it found that prior to Defendants' pleading of the facts in this case, "Plaintiff and its attorneys, of course, were morally certain that Thomasma's story was true, * * *" (R. 1220-1221) and, therefore, that Larson's proofs were perjured.

That there was a duty to report the perjury if Plaintiff had knowledge thereof seems to be conceded by all. The Circuit Court of Appeals, crediting Plaintiff with some doubt short of absolute certainty, said:

> "Under these circumstances * * * no duty devolved upon plaintiff to report this information to either the District Attorney or the Patent Office" (R. 1221).

Plaintiff and Its Attorneys Knew of Larson's Perjury at the Time of Settlement.

That the Circuit Court of Appeals was correct in agreeing with the District Court on the moral certainty of the knowledge of Plaintiff's attorneys as to Larson's perjury, is amply sustained by examination of merely a few critical bits of evidence.

Wacker testified that he "had every reason to believe that it (Larson's interference testimony) was not the whole truth when Larson conceded priority" (R. 519), eighteen months before this suit was instituted.

In his first letter to Larson's attorney on December 6th, discussing settlement of the interference, after the details of the Thomasma affidavit had been made known to Snap-On and Alberts, its attorney, Fidler wrote of Wacker's anxiety to dispose of the interference situation at an early date and repeatedly expressed the urgency of an "immediate conclusion". He wrote also,

> "Mr. Wacker is particularly concerned because of the existing trade situation respecting the form of wrench in question. It is his position that, due to the nature of the competition that he must meet with respect to the wrench, he is being additionally damaged each day that the matter is delayed" (Pl. Ex. 29; R. 873-875).

What grounds did Wacker have for his impatience? The interference had gone forward according to schedule. Larson's proofs, if true, unquestionably established his right to prevail (Finding 10, R. 1124). Only if the proofs were false did Wacker have grounds for complaint and impatience. His expression of impatience clearly discloses knowledge of the falsity of Larson's proofs (Fidler letter, Pl. Ex. 29, R. 873-875).

Automotive's other attorney, Lindsey, also infected with

this impatience, wrote Larson's attorney on December 18th when he sent a notice for resumption of the interference testimony:

> "We have advised them (plaintiff) that they are fully justified in demanding speed in view of the situation, concerning which you are fully informed" (R. 875).

The "situation", obviously, refers to the false proofs which made Larson's case. The next day Lindsey wrote Alberts charging:

> "You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson, is, to put it mildly, not the whole truth. * * *
>
> "You and Mr. Johnson should, if you do not, realize that you are holding up the issuance of the Zimmerman patent without the slightest justification" (Def. Ex. 68; R. 1049).

Here, in the contemporaneous documents written by Plaintiff's attorneys, without a word of any testimony to be weighed, lies positive proof that Plaintiff had reached the conviction that Larson had no standing in the interference, a conviction that could be founded only upon the conclusion that his proofs were perjured, and were therefore "not the whole truth" and constituted not the "slightest justification" for maintaining the interference which was holding up the issuance of the Zimmerman patent.

Then there is also that strange document which Plaintiff's attorneys procured from Thomasma and exhibited to Defendants, the Thomasma affidavit. That was an account by a man who, according to Fidler's testimony, had been told nothing of the interference exhibits or testimony but who, nevertheless, knew them as intimately as if they were—and they were—of his own authorship and experience.

The inherent evidences of the conclusiveness of the facts

recited in that affidavit make Thomasma's credibility almost irrelevant.

That affidavit, contrasted with the interference testimony in which Thomasma, known to Plaintiff to be an active agent in the Larson enterprise, did not appear as a witness and was mentioned only as a director of the company, disclosed a concealment of his critical position in the history of Larson's wrench that could but confirm and corroborate the many other positive indications of Larson's perjury.

Nor must it be overlooked that Thomasma had at that time two hundred sixty shares of Precision stock, almost one-third of the company's capital which he had repeatedly tried to sell to Plaintiff (R. 735-755).

The only explanation for Thomasma's possession of that stock was that he, like Larson, was given it for his part in the invention (R. 971, 972). Even the Circuit Court of Appeals found that they were given the stock "for the work they had done on the wrench" (R. 1213).

The Thomasma affidavit also contains the revelation that Larson and Carlsen had come to Thomasma in desperation and fright on November 12th, after the interference proofs were closed, and had sought to exact Thomasma's statement that he had no connection with the development of the Precision wrench (Def. Ex. 21; R. 1011-1012), a fact that was immediately communicated to Fidler and by him incorporated into the Thomasma affidavit (R. 756). The corroborating value of evidences of flight in the proof of guilt has been accepted since Biblical times.

Early in December, Plaintiffs knew that Alberts had withdrawn and that Hobbs had approached Fidler for a settlement and had submitted at least one incontestable term, "a concession of priority" to Zimmerman (R. 773).

That concession could have been warranted only on the ground that Larson's proofs were perjured, unless all the

parties were bent upon a larger conspiracy to pass off Zimmerman in the Patent Office as the inventor of the subject matter when Larson's proofs, if true, made him the inventor. Only if Larson's proofs were known to be perjured could the parties accept and file such a concession.

There was, of course, also the testimonial admission by Fidler that the charge in Lindsey's letter of December 19th to Alberts (Def. Ex. 68; R. 1049) that Alberts was "holding up the issuance of the Zimmerman patent without the slightest justification" was made because and "• • • after they had told us Zimmerman was the prior inventor and we hadn't yet received a concession of priority, • • •" (R. 823).

Similarly, every contract prepared by Automotive offered to Defendants in settlement of the interference contained a recital that "Zimmerman is the prior inventor" (R. 915, 920, 935, 940) a conclusion that could not stand if Larson's proofs had not been discarded as perjured.

Examination of these physical evidences of Plaintiff's certainty of the falsity of Larson's proofs could be continued indefinitely. However, the District Court found:

> "Finding 11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his Interference proofs were insufficient." (R. 1124.)

The only ground upon which the sufficiency of Larson's proofs was ever challenged is the ground that the proofs were perjured. There is thus a flat finding by the District Court that Plaintiff's attorneys knew of that perjury on or before December 20, 1940.

Without Larson's Perjury There Was No Occasion for Any Settlement of the Interference.

Larson's proofs, as the District Court has found, if true, would have proved his priority of invention two or three years earlier than Zimmerman (Finding 10; R. 1124).

If Plaintiff had not reached the conclusion that Larson's proofs were perjured there was no occasion for the settlement of the interference whereby Plaintiff procured a concession of priority by Larson to Zimmerman, the Larson patent application, and the contracts in suit.

Wacker testified that if Larson's dates were established Plaintiff was through in the interference (R. 501-502, 564). Wacker must have accepted Larson's perjury as an established fact and Thomasma's part in the production of the Larson wrench as absolute data, or he could not have found the grounds for complaint which led to the impatience for settlement expressed by Fidler in Fidler's letter to Hobbs (Pl. Ex. 29; R. 873-875).

Obviously, if Larson's dates were true his work on the wrench would have been done in 1934 and 1935, before Plaintiff had developed anything that Thomasma could have carried over to Larson in 1937 when Zimmerman did his earliest work. There could thus have been no grounds for complaint of Thomasma's collaboration with Larson in 1937 and 1938, or any claim against Larson and his confederates for unfair competition, breach of confidential disclosure, or any other civil offense.

Lindsey admitted that if Larson's statements of his early work were true, Thomasma's relations with Precision and Larson would have had no bearing on the situation (R. 711).

Fidler, in reply to substantially the same questions, at-

tempted to explain a devious theory of abandonment that he thought might have justified the subsequent demands of Plaintiff (R. 813-814). None of this was discussed during the negotiations.

Hobbs admitted flatly "that if Larson's testimony were true he was entitled to prevail in the interference, and there was no need for a settlement of any kind." (R. 604.)

There is thus incontrovertible evidence that Larson's perjury was not only within Plaintiff's knowledge at the time of the settlement but was an indispensable foundation for that settlement.

How was the knowledge of Larson's perjury employed to effect that settlement?

Automotive's Use of Knowledge of Perjury.

There is no question that Zimmerman was entitled to prevail in the Larson-Zimmerman Interference, once it is conceded that Larson's proofs were perjured. A concession of priority would have yielded Plaintiff the two claims in interference. What did Plaintiff actually get?

Plaintiff procured a concession of priority, and the Larson patent application and a covenant not to contest validity directly or indirectly, and not to infringe any claims that might issue in the Larson patent, regardless of their scope or when or how obtained. That covenant would forever have closed Larson's and Snap-On's mouths against any attack on the Larson patent, and thus prevented disclosure by those most fully informed, of the facts surrounding the original work of Thomasma on the concept patented in the Larson patent.

Plaintiff then prosecuted the Larson patent application and took, not the fourteen narrow claims (R. 907-

911) which Larson had originally filed, but an expanded patent with thirty-two claims, a patent which is now asserted against a structure entirely different from anything ever made by Plaintiff or made by Larson and Precision prior to the interference settlement. Plaintiff's contentions about the limited character of the Larson claims, in an attempt to invest him with exclusive inventorship, are belied by the institution of this suit.

The Larson application was filed by him as a sole inventor. Every fact in this record discloses that he was not the sole inventor, and that if there was invention it was the joint invention of Larson and Thomasma. That the further prosecution of the application was fraught with some delicate tactical problems is revealed by Fidler in his letter to Wacker upon the conclusion of the settlement when he reported to Wacker:

> "Any action that I take will necessarily include careful review of all the applications, including the Larson application which you now own, to determine whether or not there are additional claims that we might secure for your further protection. That, as you know, is a rather ticklish proposition because we do not want to do anything that might cause the Examiner to react against us with respect to claims already allowed.
>
> "We are much relieved due to the fact that this most unpleasant situation is behind us." (Def. Ex. 97; R. 1097.)

Fidler never raised any question of the right to present such additional claims belatedly attributed to Larson by his late opponents—more than two years after filing.

Not only was the Larson application originally filed on a misrepresentation as to the sole inventorship, but that application was fortified three times with false affidavits as to the date of conception when the interference was suggested and finally declared. The counts which Larson

falsely claimed were incorporated in that application. Can it be that a document whose birth and infancy are so fraught with fraud and deceit can ever be redeemed and made the beneficiary of the protective hand of a Chancellor?

There is no condoning what Larson did or the work of his confederates. Not only was that conduct subject to utter condemnation but it warranted the invocation of criminal process.

When Plaintiff discovered Larson's fraud and perjury and the evil arrangements by which Larson and Thomasma had gone into business with the conception that Thomasma had carried from his employer, there were several things Plaintiff could have and should have done.

Plaintiff should have informed the authorities (Title 18, U. S. Code, Sec. 251). The statute which thus imposes upon one with knowledge of the actual commission of a crime the duty to disclose that crime, is not only a criminal statute which may be invoked for the prosecution of offenders but it is a declaration of the national policy with respect to situations of this kind.

Plaintiff might also have instituted civil suit for conspiracy against those whom it detected as participants in a plot or fraud against it.

If Larson and Precision possessed any of plaintiff's "patent property" there was quick redress in the civil courts (if plaintiff had some reason to withhold the full disclosure of Larson's perjury from the Patent Office), redress which would have exposed the facts and destroyed that embryonic patent of Larson. There would have been injunctions and accounting and all of the extensive aid of chancery.

Plaintiff did not resort to the courts. Plaintiff set its

own penalty on the crime; its own price on the deliverance.

We need not enter upon the controverted versions of what occurred in the various meetings prior to the settlement of December 20, 1940. The temper of that settlement is clear in the current documents.

Plaintiff denies that there were any threats or promises made to protect Larson against prosecution for perjury. The evidence is irreconcilable. Even were everything that Plaintiff's witnesses testified to the entire testimony on this subject, there still are the implied threats carried in the Lindsey letters of December 18th (Pl. Ex. 30; R. 875) and December 19th (Def. Ex. 68; R. 1048-1050), which resulted in settlement on the following day.

The law is clear that such threats need not be expressed. As said in *Good Hope State Bank* v. *Kline*, 303 Ill. App. 381, 25 N. E. (2d) 425, 428:

> "Where there is included in the compromise of civil injuries from a criminal act, some promise or agreement, express or implied, that the prosecution of the criminal case shall be suspended, the agreement is contrary to public policy and illegal."

To the same effect are *Henderson* v. *Victor, et al.*, 268 Ill. App. 514, 517, and *State* v. *Ostensoe*, 181 Minn. 106; 231 N. W. 804, 805.

With the facts disclosed at the meeting with Thomasma on Sunday evening, November 3rd, as reported by Wacker (Def. Ex. 11; R. 924), and Larson's testimony not yet concluded, what did Automotive do?

What could it have done? It could have proceeded to tear Larson's proofs apart—brought out the truth. No—it just went along, playing for bigger stakes than merely winning the interference. Prevailing in the interference,

it could get judicially only what belonged to it, the two claims in controversy. By being its own chancellor, it procured for itself more than just victory in the interference. It procured commercial position and elimination of competition.

With the Thomasma affidavit in its possession, righteous rage should have filled the plaintiff's heart.

Plaintiff could have, of course, proceeded with the testimony in the interference and could have called all of the perjurers and brought out by further examination the true facts. Plaintiff had the material to "show up" the falsity of Larson's proofs by continuance of the interference proceeding. Instead plaintiff called a conference. What was the purpose of this conference, merely professional courtesy? If so, nothing would have stood in the way of immediate resort to the authorities to clean up this Augean stable.

Plaintiff was "concerned because of the existing trade situation", and saw a larger opportunity of taking the Larson patent application; sealing the mouth of Larson with an estoppel; sealing the mouth of Thomasma with a release and something more than Thomasma later said Travis had promised him: (Def. Ex. 46, R. 1035), and thus after an interval of 6,000 wrenches, apparently badly needed in the military program, painlessly putting Precision to death, and thus forever doing away with the "competition that he (Wacker of Automotive) must meet with respect to the wrench" (Pl. Ex. 29, R. 873-875).

That it was in fact almost a life or death matter between Automotive and Precision, Wacker testified:

> "Q. You knew that if Larson's testimony was true, that Larson should have prevailed in the Interference, and you would be out of business instead of Precision, at the time you made your settlement: did you not?

A. We suspected that, yes.

Q. You knew that if Larson's testimony was true, Larson should have prevailed?

A. If it had been true: and we suspected that it was not true.

A. I think we permitted Mr. Alberts and Mr. Johnson to hear the story of Mr. Thomasma, and that resulted in the settlement" (R. 564).

Plaintiff will argue it had no such purpose. Wacker detected the larger purpose. He had helped Larson get Thomasma's Precision stock for $500.00, a mere pittance if Precision's life had not then been doomed. On December 27th he wrote Fidler in part:

"I also acknowledge receipt of your second letter of December 26 enclosing copy of your letter to Mr. Thomas Raftery, the reporter who reported Larson's testimony. Your letter together with this enclosure requires no comment on my part.

"Well, now that the odor of this unpleasantness is becoming more remote it is indeed a relief to feel that it is successfully behind us.

"While this has been an expensive procedure and while we did not collect any damages, you were completely successful in securing our patent, in tying Snap-On into the picture and in saving us from plenty of future worry, effort and added expense" (Def. Ex. 19; R. 950-951).

Wacker even suffered a slight patriotic twinge when he saw what the extermination of his competitor might mean. He wrote Fidler on February 3, 1941:

"Of course the thing that I anticipate Snap-On and Precision will do is to try to get the Government to demand these wrenches regardless, unless we can fill the orders of the Government in the same sizes, the same specifications and at the same prices, and if that should happen it will certainly put us on a spot" (Def. Ex. 60; R. 1040-1041).

The contract which is here in suit, which was executed as part of the interference settlement, has only the one purpose: to keep the competitors out of this field by a blind acknowledgment of the validity and a blind covenant not to infringe any claims that might ever issue in the two Zimmerman applications then pending and the Larson application procured in the settlement, a covenant that might have had some justification were the covenantors licensees of the Plaintiff, but a covenant so bound with a limited license to expire within a few months, that it effectually condemned defendants to eternal respect for claims that had not then been conceived or drawn.

The covenant to discontinue manufacture of the unpatented wrench also effectively extended the life of the Zimmerman and Larson patents by the period of time that would intervene between discontinuance of manufacture and issuance of the patents.

II. The Circuit Court of Appeals Erred in Holding That Plaintiff's Attorneys Had No Duty to Report Their Knowledge of Larson's Perjury.

The District Court expressly found that

> "13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.
>
> • • • • •
>
> "16. Plaintiff's conduct in remaining silent after securing the Thomasma affidavit and in seeking to exploit the contracts and patent application procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands that a court of equity cannot entertain

the suit or any prayer for relief on plaintiff's behalf" (R. 1125).

The Circuit Court of Appeals stated expressly that although "* * * plaintiff and its attorneys, of course, were morally certain that Thomasma's story was untrue * * *", under these circumstances "* * * no duty devolved upon plaintiff to report its information to either the District Attorney or the Patent Office" (R. 1220, 1221).

The "circumstances" referred to by the Circuit Court of Appeals were merely events that occurred long before the date of settlement. The Court of Appeals failed to consider the events that attended the settlement negotiations and its execution that positively disclosed recognition by all that Larson's proofs were perjured: Larson's formal concession of priority, Lindsey's letter of December 19th charging that Larson's proofs were "not the whole truth", Fidler's recognition that "they had told us Zimmerman was the prior inventor," and the submission of formal contracts stating that it had been determined "that the party Zimmerman is the prior inventor."

In spite of this positive knowledge Plaintiff did nothing for eighteen months, when it filed this suit, and said nothing about the perjury until it was pleaded some months later.

The Criminal Code, section 146 (Title 18, U. S. Code, sec. 251), provides:

> "Misprision of Felony. Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, conceals and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined not more than $500, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, sec. 146, 35 Stat. 1114.)"

That statute is here quoted, not as a criminal section for enforcement, but as an expression of national public policy. Its expression in a federal statute was no novelty. 4 Blackstone Commentaries 120 (Cooley, 3rd Edition 1884).

In addition to the mandate of public policy implicit in the Criminal Code, the Canons of Ethics generally subscribed to, those of the American Bar Association, contain this provision:

> Canon 29. "* * * The counsel upon the trial of a cause in which perjury has been committed owes it to the profession and to the public to bring the matter to the knowledge of the prosecuting attorneys. * * *" (Also Canon 29, Chicago Bar Association; Canon 29, Association of the Bar, City of New York; Canon XXX, Boston Bar Association.)

Whatever compulsion the canons of professional ethics may impose upon those who profess adherence thereto, they are an eloquent expression and unmistakable recognition of a duty born of public policy.

What authority can be cited against this elementary mandate uttered to maintain the sanctity of the administration of justice? What principle creates any consideration paramount to those that form the foundations of a proper judicial system?

As this court has so ably said in *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, 246, answering the contention that a private litigant's tardiness in bringing to light a misrepresentation to a court of justice constituted such laches as to forbid relief:

> "This matter does not concern only private parties. There are issues of great moment to the public in a patent suit. * * * Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a

> single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

What escape is there for plaintiff from the inevitable consequences of the violation of this mandate? What interest of a private litigant in a Patent Office interference proceedings can be advanced to nullify the imperative application of this doctrine?

Plaintiff will say that neither it nor its counsel had absolute knowledge of the perjury, will say that it possessed at best a deep suspicion of Larson's proofs. Enough of the facts have been reviewed to establish that they "would convince any lawyer of normal perception" that Larson's proofs were untrue.

Again, however, if plaintiff insists that it had no *knowledge* of the perjury, and that the facts of which the Circuit Court of Appeals found they were morally certain did not impose the duty to report the perjury, plaintiff is in another dilemma:

If plaintiff knew of the perjury, it is guilty of unclean hands for failure to report it.

If plaintiff did not know of the perjury, plaintiff by procuring a concession of priority from Larson, whose proofs established priority by several years, was guilty of burying a prior inventor directly within the condemnation of the *Keystone Driller case*, 290 U. S. 240.

III. The Circuit Court of Appeals Erred in Employing a Remark of the District Court on the Credibility of One Witness as a Mandate "To Disregard All Other Evidence Which Cannot Be Reconciled" With That Witness' Testimony.

The Court of Appeals' decision is bottomed on the premise, repeatedly expressed (R. 1216, 1221), that the District Court found "that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith" (R. 1221). The Court concluded therefrom that "the contradicted testimony of Larson, Carlsen, Alberts and Johnson has no probative value and cannot be considered as substantial evidence in the light of this record" (R. 1223), and that "We are convinced that the findings of fact, with respect to plaintiff, are not supported by substantial evidence, and that the conclusions of law are not supported by the findings" (R. 1224).

This unwarranted conclusion arose from a total misconception of the language, intent and purpose of the Memorandum of the trial court (R. 1126) filed simultaneously with the findings of fact and the conclusions of law (R. 1121).

The Court of Appeals thus set itself up as the judge of the credibility of the witnesses when no findings as to any witness' credibility were tendered or made, and the only findings on credibility are 4 and 10, which find the testimony "in irreconcilable conflict" both with other testimony and documentary evidence (R. 1123, 1124).

The Memorandum was not a finding. It clearly reveals that it was delivered specifically at the *ex parte* request of the witness Hobbs.

The Memorandum clearly sets forth its purpose and intent to absolve Hobbs and not to affect issues in the case.

The Memorandum does not say that "Hobbs told the truth", but merely that "It appears from an examination of the record that the witness Hobbs did not testify falsely" (R. 1126).

That the remark that "Hobbs did not testify falsely" is not a finding that all of his testimony is true and certainly not a mandate to "disregard all other evidence which cannot be reconciled" with his testimony, is clear.

A witness may be wholly innocent of false testimony, and yet testify so inaccurately, so mistakenly, or with such poor recollection, that his testimony is wholly irreconcilable with that of other witnesses. The testimony of such other witnesses is not therefore to be rejected.

For example, in this case the witness Hobbs testified that he did not recall making a statement to petitioners' attorneys at a meeting two weeks before the trial, "Of course, we were all operating on the basis that there was perjury" (R. 627). Such a failure of recollection as well as inaccurate or mistaken recollection would still leave the witness free of a charge of having testified falsely. It would not however rebut the evidence of other witnesses or subject a court to the "duty to disregard all other evidence" which could not be reconciled therewith.

This Court, in 1896, in *Stone* v. *United States*, 164 U. S. 380, 393, in a civil suit brought to recover the value of property destroyed by Indians, found that a finding of fact could not be modified by the opinion of the trial court, stating:

> "We are not at liberty to refer to the opinion for the purpose of eking out, controlling, or modifying the scope of the findings."

This rule that the findings of fact are the controlling determination of the trial court and are not subject to qualification or control by an opinion has been the es-

tablished rule of the federal courts. *United States* v. *Flower*, 108 F. (2d) 298, 301; and *American Ins. Co.* v. *Scheufler*, 129 F. (2d) 143, 146 (both in the Eighth Circuit).

In the former case the appellant relied upon certain statements from the trial judge's opinion in direct conflict with the findings, and the Circuit Court of Appeals held:

> "It is not the opinion that controls, however, but the findings of fact made by the trial judge." (P. 301.)

In fact, in cases where the findings of fact were inadequate to support a judgment, the courts have uniformly refused to permit them to be supplemented by facts in the opinion. *Leverett Saltonstall* v. *Joseph Birtwell*, 150 U. S. 417, 419.

The Circuit Court of Appeals in this case was not in a position of having an opinion conflicting with express findings of fact. The Court had merely the Memorandum by the trial judge, made on the *ex parte* request of a witness, Hobbs, with respect to that witness' testimony and without any reference to the merits of the case except that "The Court has entered written findings and conclusions." Thus, the only record of the District Court's determination of the merits of the case is that expressed in the Findings of Fact and Conclusions of Law.

IV. The Circuit Court of Appeals Erred in Applying a Construction of Federal Rule 52a Directly Conflicting With the Terms of the Rule and Numerous Decisions.

In its opinion the Circuit Court of Appeals refused to accept the findings of fact entered by the District Court stating that "many of them are not findings of fact" (R. 1221). The Court failed to point out what findings might be subject to that criticism and clearly erred in that statement as the findings are all unmixed findings of

fact, except possibly Finding 16 (R. 1125) which found unclean hands, and, like a finding for negligence, necessarily contained an application of a legal standard.

The Circuit Court of Appeals, confronted with the rule that findings of fact supported by substantial evidence could not be set aside, circumvented this rule by weighing the testimony of the witnesses and rejecting a large part of the testimony of four witnesses as without probative value (R. 1223).

It has heretofore been pointed out that the Court was misled in the fundamental assumption which it made in employing the testimony of Hobbs as outweighing that of all of the other witnesses. It is the purpose of this section of the brief to point out that the Court erred in assuming a function as a trier of facts in violation of Civil Rule of Federal Procedure 52a, which, with respect to cases tried without a jury, reads in part:

> "Findings of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Trial Court to judge of the credibility of the witnesses."

When this rule was first proposed as Rule 68 of the Preliminary Draft of Rules of Civil Procedure (May 1936) it read (p. 118):

> "The findings of the Court in such cases shall have the same effect as that heretofore given to findings in suits in equity."

and the notes of the Advisory Committee to this Court stated that in equity cases the proposed rule left "all cases tried without a jury to be fully reviewed on appeal" (p. 121).

In the next report of the Advisory Committee (April 1937) the proposed rule was expressed in its final form and the note to this Court stated that the proposed rule

"accords with the decisions on the scope of the review in modern equity practice" (p. 150).

In the notes to the Rules as promulgated this statement was expanded by the addition of this sentence:

> "It is applicable to all classes of findings in cases tried without a jury whether the finding is of a fact concerning which there was conflict of testimony, or of a fact deduced or inferred from uncontradicted testimony." (P. 264-265.)

The Advisory Committee cited four cases in this Court. *Warren* v. *Keep*, 155 U. S. 265, *Furrer* v. *Ferris*, 145 U. S. 132, *Kimberly* v. *Arms*, 129 U. S. 512, and *Tilghman* v. *Proctor*, 125 U. S. 136, which is referred to in each of the three other cases cited by the Advisory Committee. In the last case this Court said:

> "We are then brought to a consideration of the exceptions taken to the master's report in matters of fact, affecting the accuracy of his conclusions in respect to the amount of those profits, gains and savings. In dealing with these exceptions, the conclusions of the master, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part." (P. 149.)

One of the earliest statements on the rules, New Federal Procedure and the Courts by Alexander Holtzoff, contains this construction of the Rule:

> "In view of the above mentioned restriction on the scope of appellate review of the findings of a trial court, the results reached should not be set aside by the Circuit Court of Appeals in a case in which the evidence is conflicting and one of the elements involved was the credibility of witnesses." (p. 133.)

This authority would apparently make the scope of appellate review more nearly like that in an action at law

tried before a jury. That the rule itself is not entirely unambiguous has been observed by several commentators on the rules. See Scope of Review of Findings, 2 Federal Rules Service, 672-675, and Ilsen, Federal Appellate Practice As Affected By The New Rules of Civil Procedure, 24 Minn. L. R. 1, 34; 2 Federal Rules Service, 737:

"The rule was changed in the second published draft; the language of the second draft so far as it pertains to the scope of review of facts is the same as that in Rule 52, as adopted by the Supreme Court, which provides: • • •

"It has been assumed that Rule 52 provides for the equity review, but there is a possibility that the scope of review called for by this rule may be an open question for the Supreme Court to settle, for not only has the express equity characterization been deleted in favor of language which, although found in modern federal equity cases, would seem to be an accurate statement of the effect to be given to jury verdicts, but also the Committee Note states, not that Rule 52 adopts, but merely that it is in accord with the modern federal equity practice. To the extent that the traditional concepts of law review are applied under Rule 52, to that extent will the burden on the appellate courts be lightened. It seems particularly desirable that the Supreme Court be freed from the necessity of analyzing confused and conflicting testimony and passing upon the weight of evidence. To this end, it is not beyond expectation that the Supreme Court may find Rule 52 ambiguous and resolve the question in favor of the common law rather than the equity formula."

The Seventh Circuit Court of Appeals has repeatedly laid down the true principle for the application of Rule 52 (a):

In *Campana Corporation* v. *Harrison*, 114 F. 2d 400, 405, the court said

"In the application of Federal Rule 52 it is the

following principle that guides this Court; the reviewing court does not review the evidence as an original fact finding tribunal; it does not attempt to settle conflicts in evidence or to determine questions of credibility."

Similarly, in *Carter Oil Co. v. McQuigg*, 112 F. 2d 275, 279, the court said

> "Where the question is one of veracity it is clear that the appellate court should give controlling weight to the trier of fact who saw and heard the witnesses. This is well established."

The scope of review available in an equity case under this rule has been the subject of scores of decisions, all however precluding the Circuit Court of Appeals from substituting its judgment of credibility for that of the District Court or setting aside findings not "clearly erroneous."

In the earlier case of *Webb v. Frisch*, 111 F. (2d) 887, 888, the Seventh Circuit Court of Appeals observed:

> "We cannot say that a finding of fact of prior use is 'clearly erroneous' merely because we might have entertained some doubt about the quantum of evidence."

In *Manning v. Gagne*, 108 F. (2d) 718, 720, the First Circuit Court of Appeals said:

> "We are not called upon here to decide whether there was substantial evidence warranting findings by the judge different from those which he made, but only whether his findings are clearly erroneous within Rule 52(a). * * *."

In *Kuhn v. Princess Lida of Thurn and Taxis*, 119 F. (2d) 704, 705, the Third Circuit Court of Appeals said of this rule:

> "So long, therefore, as a finding of fact is supported by evidence and is not clearly erroneous, it is to be accepted on appeal as verity;"

This idea also finds expression in *Andrew Jergens Co. v. Conner, Sixth Circuit Court of Appeals,* 125 F. (2d) 686, 689, where the court held that the findings were conclusive upon it:

> "* * * no matter how convincing the argument, that upon the evidence the findings should have been different, unless there is no substantial evidence to support them."

In *Anglo-California National Bank v. Lazard,* Ninth Circuit Court of Appeals, 106 F. (2d) 693, 703 (Cert. den., 308 U. S. 624; 84 L. ed. 521, 60 S. Ct. 379) the court, after concluding that there was substantial evidence to support the findings, observed that—

> "the weight to be given to the evidence was for the trial court and not for this court."

Whatever the rule attempted to be expressed in Federal Rule 52 (a), whether the review of facts is to be limited to the rejection of findings which find no substantial support in the evidence or whether the facts found by the District Court are accepted as conclusively as those found by a jury, it is inescapable that the reviewing court is forbidden from rejecting findings of fact unless "clearly erroneous", and certainly where there is a conflict in the testimony "due regard * * * to the opportunity of the trial court to judge of the credibility of the witnesses" forbids the substitution of the reviewing court's determinations of credibility for those of the District Court.

The Circuit Court of Appeals in this case based its decision completely on its mistaken assumption that the District Court's statement that Hobbs' had not testified falsely was a finding by the District Court that Hobbs' testimony was all truthful and unimpeached by the clearly contradictory evidence of other witnesses.

What the Circuit Court of Appeals did was thus merely to weigh the credibility of witnesses and to reject the testimony of many witnesses accepted by the District Court, a function denied to it by the clear terms of Rule 52 (a).

The District Court heard all the witnesses. When he withdrew his oral opinion he filed his findings with respect to the evidence presented. That the findings are supported by substantial evidence is manifest from the contemporaneous documents and uncontradicted testimony of Automotive's own witnesses. That the findings are not clearly erroneous is manifest upon the most cursory review of the evidence. The District Court's judgment of the credibility of the witnesses has been flagrantly disregarded by the Appellate Court.

Conclusion.

The judgment of the Circuit Court of Appeals should be reversed and that of the District Court dismissing the complaints for unclean hands affirmed.

Respectfully submitted,

WILL FREEMAN,
CASPER W. OOMS.

Chicago

December 11, 1944.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON, AND SNAP-ON TOOLS CORPORATION,

Petitioners;

vs.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,

Respondent.

REPLY BRIEF FOR PETITIONERS.

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

January, 1945.

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Respondent.

REPLY BRIEF FOR PETITIONERS.

The brief of Respondent (plaintiff) glosses over the fundamental issues of this case, that plaintiff knew of Larson's perjury and used that knowledge in procuring the application which ripened into the Larson Patent and the contracts sued upon, and did nothing to bring that crime to the attention of the authorities. Plaintiff then seeks to justify the conclusions reached by the Circuit Court of Appeals by ignoring the facts which the Circuit Court of Appeals chose to ignore. The brief justifies counsel's conduct on the ground that independent legal advice was sought and followed in the course which plaintiff pursued. A short reply will meet those contentions.

The Independent Legal Counsel Consulted by Plaintiff Were Not Apprised of the Facts Which Plaintiff Knew When the Settlement Was Effected.

The Circuit Court of Appeals (R. 1214-1215) lays emphasis on the statement that plaintiff's attorney Fidler consulted an outside attorney on November 18, 1940, with respect to complaining about Larson's perjury, and was advised against it and told to take the matter up with Larson's attorney.

Fidler testified very perfunctorily as to what he told Mr. Thomas, whom he consulted on that date (R. 759-760), and he testified quite fully (R. 777-779; 792-793) as to his telephone consultation with Mr. Dunbar, who also testified with respect to the telephone conference (R. 824-827). It does not appear from any of this testimony that either counsel was provided with a fair and adequate version of the facts.

In any event, a great deal transpired between the time of these conferences and the settlement of the interference: Larson conceded priority, a concession to the falsity of his proofs (R. 519). Somebody for defendants told Fidler that Zimmerman was the inventor of the subject matter of the interference (R. 823). Lindsey learned enough facts to charge Alberts in writing that he was "holding up the issuance of the Zimmerman patent without the slightest justification." (R. 1049)

Plaintiff would make it appear that Dunbar knew of Larson's offer to concede priority when he talked on the telephone with Fidler. Plaintiff says (Br. p. 10):

> "The question is then whether the offer to concede priority was enough to lay respondent under an immediate duty to file an information against Larson and his supporting witnesses. *The answer is that lawyer Dunbar was consulted and advised aghinst it.*" (Emphasis by plaintiff.)

Both Fidler's (R. 777-779, 792-793) and Dunbar's (R. 824-827) testimony will be searched fruitlessly for any hint that Fidler ever told Dunbar that Hobbs, whom Fidler had first talked to that same week, had offered Larson's concession of priority. Fidler himself testifies to no more than that he told Dunbar of Larson's proofs and Thomasma's contradictory affidavit, for Fidler says, "I had only Thomasma's word for the matter," (R. 778) and further,

> "No, I merely gave to him the highlights, as you have called them, of that story, the contradictory—the points of contradiction between the Larson story and and Thomasma affidavit." (R. 792)

Thus, whatever doubts counsel for plaintiff might have entertained when Thomas was consulted on November 18 and Dunbar (by telephone) on December 7, had been thoroughly dispelled by the time Larson signed a concession of priority, used by the plaintiff to obtain the Zimmerman patent over Larson's earlier proofs.

Clearly, however, any doctrine which would permit counsel or a litigant to avoid liability for his conduct by taking counsel of another attorney would be dangerous. Neither the criminal law nor the principles governing civil liability recognize legal advice as justification or excuse for misconduct. A contrary doctrine would render legal advice a sanction more powerful than any legal doctrine. The doctrine is unthinkable.

Whatever the effect of legal advice upon the conduct of plaintiff in this case, the record is clear that the course pursued by plaintiff and its attorneys was not one counseled by either Thomas or Dunbar. Neither suggested or endorsed settlement of the interference, or the manner in which it was settled. Neither was asked whether there was warrant for reporting the perjury after Larson had

confirmed it by his concession of priority. Neither had been asked with respect to the duty to report that perjury after Fidler had been told by his opponents that Zimmerman was the inventor. Whatever corroboration of Thomasma's story—if any corroboration were needed—was lacking when these counsel were consulted was amply supplied before the settlement was effected.

Any attempt to evade the simple legal duty of reporting the crime because of the advice of Thomasma and Dunbar on November 18 and December 7 fails when the occurrences of the last three weeks of December are recalled.

The Circuit Court of Appeals Too Ignored the Confirmatory Evidence of Thomasma's Story.

Plaintiff's brief (pp. 2-3) quotes from the opinion where the Circuit Court of Appeals flatly said that Larson's pre-trial examination on March 27, 1943 and the pleadings of February, 1943 were "the only confirmatory evidence of Thomasma's story of which plaintiff had knowledge." The Court did add that even on that uncorroborated evidence, "plaintiff and its attorneys, of course, were morally certain that Thomasma's story was true." (R. 1220-1221).

The Circuit Court of Appeals thus completely ignored the effect of Larson's unqualified concession of priority, his signing the contract with plaintiff reciting that "Zimmerman is the prior inventor of the subject matter involved in said interference" (R. 915); Fidler's admission that "they had told us Zimmerman was the prior inventor" (R. 823) and the many other facts which confirmed indisputably plaintiff's knowledge of Larson's perjury.

When plaintiff proposed its findings (R. 1104-1116) it did not even propose a finding that plaintiff or its attorneys

did not know of this perjury by December 20, 1940 when the settlement was effected.

The Circuit Court of Appeals minimized the credibility of Thomasma's story by properly designating him as plaintiff's "traitorous former employee" (R. 1221) and mentioning Thomasma's "former disloyalty," implying that this man's bad character was such as to make his incredibly detailed and factual affidavit only a frail pillar for the prolonged "suspicion" which plaintiff was obstinately entertaining with respect to the truth of Larson's proofs.

As a matter of fact, the settlement was hardly effected by the plaintiff and defendants when Thomasma was restored to grace. The record contains numerous letters between Thomasma and his betrayed employer, Wacker, and plaintiff's attorney, Fidler, from April 1, 1941 to the time of the filing of this suit, and in eleven of these letters Thomasma is always addressed as "Dear George" (R. 949, 1021, 1023, 1025, 1026, 1028, 1031, 1034, 1036).

Wacker repeatedly assigned Thomasma the task of finding out what plaintiff's competitor, Precision, was doing (R. 949, 1024). Thomasma procured the information, suggested a meeting with Wacker and had it (R. 950, 1028). Wacker and Thomasma had luncheon together (R. 335-336). Thomasma called at Wacker's home (R. 553). Even Mrs. Thomasma was reporting on Precision's activities (R. 1101).

Thomasma at one time pertinently inquired, "I would like definite information regarding his (Wacker's) promise to me, thru Mr. Travis, last year" (Def. Ex. 46, R. 1035).

On April 22, 1942 Thomasma asked Wacker for a shaper "perhaps on a lease-lend basis" (R. 1030), and Wacker denied the request as impossible because of priority regulations (R. 1031-1032).

The suit was filed on June 15 and on Saturday evening, probably June 27, Fidler called on Thomasma at his home, gave him two hundred dollars cash and took a receipt for that money and for "One AMMCO Shaping Machine" which had been delivered a few days previously (R. 338-340; R. 1020).

The District Court Did Find That Plaintiff and Its Attorneys Knew of Larson's Perjury and the Circuit Court of Appeals Expressly Held That They Were Morally Certain Thereof.

Plaintiff does not dare argue that its attorneys did not know at the time of the settlement of the Larson-Zimmerman Interference that Larson's proofs were perjured. Plaintiff argues that defendants' contention that such knowledge existed "challenges the District Court's findings of facts".

Plaintiff proposed no finding that plaintiff or its attorneys lacked knowledge of the perjury at the time the interference was settled (R. 1104-1116) but merely that "Automotive and its attorneys did not at any time charge Larson or any of his witnesses with the crime of perjury", threaten them with the institution of prosecution therefor, promise to withhold the complaint, agree to suppress the evidence or otherwise coerce or threaten defendants (Proposed Findings 33-42; R. 1114-1115). These proposed findings were all refused.

Findings 10 and 11, which were entered (R. 1124), held that "if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman," and that Plaintiff's attorneys knew by December 20, 1940, "that Larson knew his interference proofs were insufficient".

Although the only ground on which the proofs were ever attacked in the prolonged negotiations was their falsity, plaintiff now states (Br. pp. 9-10) that "other reasons could have existed for recognizing Zimmerman as the one entitled to the patent, *e.g.*, estoppel against Larson by reason of his delay in applying for patent and his being stimulated to do so upon learning of Zimmerman's wrench," quotes Fidler's letter written five months before the settlement calling attention to the fact that Larson claimed to have made his invention four years before he filed his application, which is the same letter in which Fidler expressed positive disbelief of Larson's dates (R. 1084-1085), and then refers to Fidler's testimony where he mentions his theory that Larson's work was an abandoned experiment (R. 813).

Any suggestion that Larson's proofs were vulnerable because they disclosed an abandoned experiment was abandoned long before the interference testimony was taken and plaintiff very properly concedes in its brief (p. 10) "However, we do not stake the case upon any such proposition • • •".

A proposed finding was offered to and refused by the District Court, which would have qualified the Court's finding as to Larson's false proofs establishing his unquestioned priority by a reference to "abandoned experiment or a lack of diligence" (Proposed Finding 27; R. 1113).

Plaintiff's brief renders unmistakable that the settlement of the Larson-Zimmerman Interference was based upon the flat assumption and unqualified conclusion that Larson's proofs were perjured. Plaintiff says:

> "In the present case respondent entered into the agreements to secure its property to which it was justly entitled, to-wit, its exclusive property rights

in the Zimmerman wrench inventions involved in the interference. The Larson application, however, was not received by respondent as property which had been taken from it. That application was received only in consideration of the right which respondent gave petitioners to make additional wrenches in lieu of royalties and of the release given by respondent to petitioners as to all civil damages." (Resp. Br. p. 53).

Plaintiff's "exclusive property rights in the Zimmerman wrench inventions involved in the Interference" did not exist if Larson's proofs were true.

The consideration for the settlement, "the right which respondent gave petitioners to make additional wrenches in lieu of royalties" did not exist if Larson's proofs were true.

The consideration for the settlement, "the release given by respondent to petitioners as to all civil damages" did not exist if Larson's proofs were true.

If Larson's proofs were true, Larson and not Zimmerman owned the "inventions involved in the interference".

If Larson's proofs were true he was entitled to the patent on the wrench and had unquestioned right "to make additional wrenches."

If Larson's proofs were true there was no conspiracy between Thomasma and Larson and no "civil damages" inflicted upon Plaintiff.

Indeed, at the time of the settlement, plaintiff held no patents on these wrenches and whatever the state of Larson's proofs he was entitled "to make additional wrenches." His willingness to submit to a covenant to discontinue making wrenches of the type involved in the interference not only constituted an unquestionable admission of the falsity of his proofs, but submission to a restraint that could have been imposed only by some

such overwhelming force as the implicit threat to expose his crime.

Absent Larson's perjury and plaintiff's knowledge of it, there was no occasion for settlement of the interference. Every term of the settlement is premised upon a recognition that Larson's proofs were false and the settlement contract could only have been drafted by one who knew of that falsity.

Plaintiff's Analysis of the Opinion of the Circuit Court of Appeals Is Neither Accurate Nor Complete.

Plaintiff (Br. P. 15-16) breaks down the opinion of the Circuit Court of Appeals into three parts. The first of these states the case without comment (R. 1210-1212). The second, plaintiff says, is "a careful and exact exposition of the facts as to the matters dealt with in the District Court's fact finding and as to the only conclusion upon which the judgment was based, *i.e.*, respondent's unclean hands by reason of its silence", which is the matter at issue in this Court. That part of the opinion covers nine pages (R. 1212-1221), and, plaintiff says, "Throughout these nine pages no reference of any kind is made to the District Court's Memorandum finding that Hobbs had not testified falsely" (Br. p. 16). This positive statement is not true. On page 1216 the Court of Appeals said:

> "Hobbs has never seen Thomasma's affidavit, nor any of the interference evidence, and no one at that time had ever told him that Larson and Carlsen had perjured themselves. Larson, Carlsen and Alberts testified that they told Hobbs of the perjury on that day, but Hobbs denied this, and the District Court tells us by this record that Hobbs told the truth." (R. 1216.)

The third part of the opinion, as plaintiff dissects it, dealt with the charges that plaintiff procured the contract in suit by compounding a felony and by coercion, issues

upon which the District Court made no findings, but as to which the District Court refused plaintiff's extensive proposed findings 22-44 (R. 1114-1115). It is with respect to this part of the case alone, plaintiff insists, that the appellate court gave weight to the District Court's statement that "Hobbs did not testify falsely" (Br. p. 16). Plaintiff's position overlooks the appellate court's own statement, quoted above, a statement doubly significant in view of the Court's subsequent conclusions that,

> "However, the District Court informs us that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith" (R. 1221).
>
> "The District Court did not believe the testimony of Larson, Carlsen or Alberts, or any other witness, where it contradicted Hobbs' testimony, and the latter did not disagree with the testimony of plaintiff's attorneys which related to the same facts" (R. 1222).
>
> "We are convinced that the contradicted testimony of Larson, Carlsen, Alberts and Johnson has no probative value and cannot be considered as substantial evidence in the light of this record" (R. 1223).

Plaintiff insists that the appellate court complied with the mandate of Rule 52a that "due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses"; and that the only witness whose credibility was passed on was that of Hobbs (Br. p. 17). It seems superfluous to repeat that a statement that "Hobbs did not testify falsely" is not a finding that his testimony was all credible, and certainly is no such command as the Circuit Court of Appeals read in it, "to disregard all other evidence which cannot be reconciled" with Hobbs' testimony. Yet, upon this statement the Circuit Court of Appeals boldly concludes that the District Court did not believe the other witnesses (R. 1222).

The District Court refused to enter the very findings

from which the Circuit Court of Appeals weaves its opinion (R. 1114-1115). Still the Circuit Court of Appeals ignores all this, ignores the fact that the District Court twice specifically found the testimony in irreconcilable conflict; and cavalierly decides that the District Court discarded defendants' witnesses, believed only those of plaintiff, and then entered findings in support of defendants; but that these findings are without substantial support because the witnesses who supported them, and must have been believed by the District Court, were not believed by the District Court.

If the District Court had found the irreconcilable conflict in the testimony as easily resolved as the Circuit Court of Appeals did, it could very easily have made specific findings with respect to the individual witnesses' credibility. The District Court never attempted this task, and even with respect to Hobbs, whose recollection was admittedly faulty with respect to matters not three weeks old when he testified (R. 627), the Court never passed upon his credibility, but merely exculpated him from a statement in the Court's oral opinion which apparently implied that he had given false testimony.

The inability of the Circuit Court of Appeals to find "substantial evidence" in the record to support the finding of unclean hands is not dependent upon the acceptance of the testimony of any of the witnesses whom the Circuit Court of Appeals discards.

There is no question that neither plaintiff nor its attorneys reported Larson's perjury. Can there be any question that they knew of it? The District Court says that "the proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his interference proofs (which, if they had been true, * * * would have proved

priority of invention two or three years earlier than Zimmerman') were insufficient'" (R. 1124). The District Court found that Thomasma's affidavit "disclosed such intimate knowledge (of Larson's early work) as to leave little doubt of the author's knowledge of the facts" (R. 1123), and that plaintiff's "remaining silent after securing the Thomasma affidavit" infected its causes with unclean hands (R. 1125).

The existence of the Thomasma affidavit and its contents are not dependent upon the credibility of anybody's testimony.

The fact that Larson conceded priority is not established by controverted testimony.

The recitals in the proposed and executed contracts are manifest in the documents themselves.

Lindsey's charges that defendants were "holding up the issuance of the Zimmerman patent without the slightest justification" and that, "You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth," do not stand or fall on testimony.

Only Fidler's undisputed statement, that "they had told us Zimmerman was the prior inventor" has a testimonial foundation. But he was one of the witnesses adopted by the appellate court.

All of these very fundamental facts, were of plaintiff's attorneys' authorship, and in the face of them to conclude that the finding of unclean hands is without substantial support in this record constitutes a flagrant violation of the appellate function.

Similarly the Circuit Court of Appeals persists in following plaintiff in refusing to recognize that Alberts, who told Fidler and Wacker that he would withdraw as Larson's counsel if Thomasma's story, which had been dis-

closed to him at that meeting, were found to be true, did actually withdraw as Larson's counsel, although he never filed a formal withdrawal in the Patent Office. Alberts wrote Fidler on December 3, 1940, the letter quoted on page 27 of our principal brief.

On the day preceding the date of that letter Hobbs, as Larson's new counsel, had met with Fidler, leaving no doubt that Alberts had withdrawn as he had proposed to do if he found Thomasma's story confirmed. That alone was substantial evidence of plaintiff's knowledge that Larson's proofs were perjured.

Wacker stated flatly that Alberts had promised to withdraw if he found Thomasma's story confirmed, and did withdraw (R. 523-524, 526-528).

Further substantial evidence that plaintiff knew of Larson's perjury is found in the manner in which counsel for plaintiff sought to resume the interference proceedings on December 18 when the negotiations for settlement broke down. Plaintiff's attorneys served on Alberts a notice that the testimony for Zimmerman would be taken beginning December 23. Five witnesses were named (Def. Exh. 77, R. 1068-1069). These were respectively: Raftery, who had reported the Larson deposition; Mrs. Larson and Mrs. Carlson, wives of Larson and his associate in the Precision Company; Schmid, an office associate of Fidler; and Fidler himself. Fidler attempted to explain why all of these people were named and admitted that he alone was going to testify to the facts as to Zimmerman's early dates (R. 783-785). Of these five witnesses only Fidler knew anything that was relevant to Zimmerman's priority, and the other witnesses were named obviously as an intimation that Larson's proofs were to be vigorously attacked (R. 716-718).

The Circuit Court of Appeals also overlooked the sub-

stantial evidence found in the testimony of plaintiff's president, Wacker, and Wacker's letter of November 5, 1940 (Def. Exh. 11, R. 924-928) reporting Thomasma's revelation at Fidler's home on Sunday evening, November 3. The Court of Appeals, ignoring Wacker's letter, said that Thomasma at that meeting, "asserted that he had given Larson the idea of developing a wrench from the Automotive Wrench, but he disclosed no specific facts with respect thereto" (R. 1214). This discloses a complete disregard of Wacker's letter and particularly the paragraph in the middle of R. 926.

Wacker testified that Thomasma "told us that, from information that he got, we were being framed" (R. 506). Wacker also testified that he "had every reason to believe that if (Larson's testimony) was not the whole truth when Larson conceded priority" (R. 519). Wacker also testified that Alberts "definitely said that, that if Mr. Thomasma's story was substantiated, that he would withdraw as attorney for Precision and Larson. * * * Well, Mr. Alberts had withdrawn from the case at the previous meeting. * * *" (R. 523-524). He repeated this testimony (R. 526-527) and again that Alberts had "said that he would cease to represent them had Thomasma's story proved to be true" (R. 528).

The evidence to support the trial court's findings is not only substantial, but overwhelming.

Plaintiff's Unnecessary Concern With the Asserted Fairness of the Contracts in Suit Is Untimely and Presented as a Diversion From the Issue of This Case.

Plaintiff argues at length the fairness and legality of the contracts in suit, although plaintiff admits (Br. p. 27) that that issue is not before the Court. Defendants' discussion of the terms of those agreements related to the

positive recitals therein as demonstrating knowledge by plaintiff and its attorneys of Larson's perjury, and the excessive restraints therein as evidence, in the light of the other circumstances, of the overpowering compulsion born of the knowledge of that perjury.

Plaintiff repeatedly quotes from that portion of the opinion of the Circuit Court of Appeals relating Hobbs' early negotiations with Fidler, but never quotes the statement; "After receiving Hobbs' letter Fidler notified Hobbs that Automotive wanted a ten per cent royalty" (R. 1216). Obviously that demand, which was finally incorporated in the contract in suit as applicable to any overrun of wrenches beyond the 6000 which defendants were permitted to make (although no patents were issued until more than two years after the settlement), could have been entertained only if defendants were in some manner liable to plaintiff for the manufacture of those unpatented wrenches, and that liability could have accrued only from Thomasma's participation with Larson in devising a wrench during 1938 and later, a possibility in complete contradiction of Larson's interference proofs. If Larson's proofs were true that collaboration was too late to have expressed itself in the development of the wrench on which plaintiff sought to collect ten per cent. Plaintiff could have made the demand only upon realization and recognition that Larson's proofs were perjured.

Plaintiff argues that defendants were "getting the better of the bargain" at the time of the settlement "because the Larson application no longer represented great value to them," because of Larson's development of his new wrench which involved an entirely new principle (Br. p. 25). The Circuit Court of Appeals' opinion also mentions this modified wrench (R. 1220).

This argument begs the question. Larson did develop a wrench fundamentally different and completely foreign to

the concept incorporated in the Larson and Zimmerman patents in suit, but this has not prevented plaintiff from charging infringement of those patents by the manufacture and sale of this completely different wrench. The development of the new wrench, undisclosed to plaintiff at the time of the settlement, certainly could not have influenced the settlement or prompted plaintiff's assertions of the extreme terms incorporated in the settlement agreement. The facts of this later development were not only undisclosed but they are completely irrelevant to the question of Larson's perjury and plaintiff's knowledge of it. That defendants knew of the new wrench and saw an avenue of salvation from the extinction which plaintiff thought it was contriving in the settlement, had no influence upon the interference settlement.

Although the Circuit Court of Appeals recognized that Larson built the new accused wrench in the summer of 1941 (R. 1220) the Circuit Court of Appeals also led itself to the absurd statement that, "the defendants continued to operate under the pending application, and raised no question as to Thomasma's joint authorship of Larson's disclosure until March 1, 1943, * * *" (R. 1223). The most cursory comparison of the wrench which defendants were selling at the time of the settlement (Phys. Ex. 2) with the new Larson wrench now accused (Phys. Ex. 3) instantly discloses their fundamental differences in construction and principle of operation. Nothing in the Larson application suggested or bore on this new type of wrench until plaintiff inserted the asserted claims 31 and 32 long after Larson had disposed of the application and plaintiff had seen his new wrench (R. 1148-1157).

Plaintiff's Argument That There Was No Fraud in Larson's Original Patent Application Contradicts Its Conduct During the Settlement or the Interference.

Plaintiff misconceives the argument with respect to Plaintiff's adoption and prosecution of the Larson patent application to issuance into the patent in suit. That fact is urged, not as a separate ground of error, as Plaintiff presents it, but as another factor in Plaintiff's conduct which the District Court condemned as constituting unclean hands.

Plaintiff sums up its estimate of Larson's contribution (Br. pp. 30-31) by attributing several features of the Larson wrench to Thomasma and then severing this from Larson's contribution in this passage:

> "Those were not the features claimed in the original Larson application. The inventive contributions were rather to be found in the manner in which the dial reading was taken on the spring bar (R. 1002), involving the swivelled mounting of the spring member intermediate of its length with the indicator operated through connection with the extremity of that member, the indicator being located at the handle end of the chambered body. *These are the things that were worked out by Larson and covered by his application.*" (Resp. Br. p. 31. Emphasis in Brief.)

It requires no sophisticated analysis of the Larson patent to demonstrate that these things, attributed to Larson by Plaintiff and said by Plaintiff to have been "worked out by Larson and covered by his application", are not the things claimed in the Larson patent either as filed or as issued.

For example, claim 1 as filed (R. 907) contains no reference to any "swivelled mounting of the spring member"; and neither claim 31 nor claim 32 of the issued patent con-

tains any such "swivelled mounting of the spring member" (R. 1156). That claims 31 and 32 contain no such demand is manifest from the fact that these claims are asserted against defendants' present wrench (Phys. Exh. 3), which likewise has no "swivelled mounting of the spring member".

These facts, based upon a comparison of the actual physical models with the Larson patent itself, are not dependent upon the testimony of any of the witnesses, although plaintiff (Br. pp. 30-31) seeks to fortify its argument with a carefully selected fragment from the affidavit of its former traitorous employee, Thomasma. It is impossible to read this affidavit without coming to the conclusion that the Larson application was an expression of the joint work of Thomasma and Larson.

In this same section of its brief plaintiff justifies the covenant of Larson not to contest the validity of the patent to be issued upon his application but fails to mention the fact that the same contract exacted a covenant with respect to the Zimmerman patents which, if Larson's proofs had been true, were Larson's invention.

Plaintiff mentions also that the District Court made no findings upon this issue but fails to mention that the District Court refused plaintiff's proposed findings 7 and 25 (R. 1106, 1113) and a specific finding set forth in plaintiff's "Remarks" (R. 1116), which would have supported plaintiff's present argument.

Whether or Not There Were Threats, Promises Not to Prosecute, Agreements to Suppress Evidence, It Is Clear That Plaintiff Was Guilty of Unclean Hands.

Plaintiff chooses to argue at some length an issue that has not been presented in defendants' brief, that of whether or not the interference settlement was procured by

the use of threats or attendant promises not to prosecute and an agreement to suppress evidence (Br. pp. 34-39). The District Court refused plaintiff's proposed findings on these issues and defendants tendered none in view of the District Court's conclusion of unclean hands by virtue of plaintiff's failure to report the perjury (R. 1104-1116).

Plaintiff's protest about the lack of threats is apparently merely an effort to anticipate a realistic appraisal of the character of Lindsey's letter of December 19th (Def. Exh. 68, R. 1048-1050) of which the Circuit Court of Appeals made the statement quoted by plaintiff (Br. p. 34) that these were not direct threats and Alberts' interpretation of them was based upon unwarranted inferences "and were mere products of his imagination." (R. 1222).

The letter charges that a large part of Larson's testimony is, "to put it mildly, not the whole truth" and charges Alberts with "holding up the issuance of the Zimmerman patent without the slightest justification." It also twice warns Alberts that he and his client cannot divest themselves "of all responsibility in this matter." (R. 1049).

Lindsey's attempted explanation of this letter is a semantic excursion which but confirms the fact that a large part of the letter's potency was its deliberate ambiguity (R. 695-698, 706-716). One attorney does not write to another that his proofs are, "to put it mildly, not the whole truth" and assure him "that there are further developments to still be revealed," except either that he has conclusive proof of the falsity of the testimony or, worse still, that he is seeking to exert an improper pressure by capitalizing on a "suspicion" so real that he can safely make the quoted statements.

This Court has observed in *U. S. v. Crescent Amusement Co.*, 323 U. S. ____ (decided Dec. 11, 1944) with respect to

cases involving violations of the Sherman Act, "The crucial facts in each case would be subtle ones as is usually true where purpose and motive are at issue." The purpose and motive of Lindsey's letter are clear. The generality in which the charges are couched was adequate to give Alberts and his client, Johnson, opportunity to read into them their significance and still leave, as was doubtless intended, an opportunity for Lindsey to dispute their intended implications." Lindsey attempts to relate the charges in the letter entirely to Alberts' failure to have Larson's testimony fully transcribed (R. 699) when, in fact, the parties had agreed to suspend transcription while the negotiations were under way (R. 1049).

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* * * Zealous advocates have now and then been charged with dishonesty and insincerity, when perhaps they should only have been accused of possessing a childlike credulity. Their "will to believe" had been developed to an abnormal and dangerous degree. * * *

The curious estimate of human credulity often observed in courts of law, has perhaps grown out of that phase of advocacy which contends, in at least partial good faith, that an advocate should be prepared to defend or attack either side of any proposition. There are those who are inclined seriously to argue that it is the duty of the lawyer to make the best of whatever disagreeable task may come to him. His weapons are sophistry, subterfuge, plausibility, violent assertion, and that quality of language that conceals thought. But the strangest thing about the performance is that this insincere pleader has himself become a victim of childish credulity. He partly convinces himself that a ridiculous proposition is possibly true. Of all men it is natural to think that the lawyer would have developed the keenest critical sense; but with many members of the profession this is not the fact. They are not qualified to decide what is credible and what is not, and are totally disqualified as scientific investigators. These men have become experts in excuses, apologies, and explanations, and in the process of acquiring their skill they seem to have dulled their judgments as well as their consciences. * * *

Albert S. Osborn, The Problem of Proof (2d Ed., 1926), pp. xix-xx, 31-33. Cited in Cases and Materials On The Legal Profession, Elliott E. Cheatham, pp. 164.

The Authorities Cited by Plaintiff Are Not Pertinent.

Plaintiff cites a number of cases (Br. pp. 39-41) on the proposition that the knowledge of an agent cannot be imputed to his principal to burden the principal with the consequences of the agent's unclean hands. That may be conceded. In this case the doctrine has no application.

Wacker participated throughout the negotiations and his testimony is more direct than any of his attorneys on his recognition of his knowledge that Larson's proofs were perjured.

Wacker's information was so complete that Fidler wrote him at the time of the settlement—

> "I will not go into detail herein regarding matters leading up to the settlement because I believe you are as familiar with them as I am." (Def. Ex. 94; R. 1092.)

It is not necessary to review the facts here to establish that both the attorneys and Wacker enjoyed their "suspicion" by virtue of direct and actual knowledge and not by reason of any legal doctrine of imputation.

Plaintiff next argues that there was no positive, wilful, or intentional wrong by plaintiff or its attorneys and that the doctrine of unclean hands is therefore not applicable. In this case it is perfectly evident that the capable attorneys and the alert Wacker were suffering from no misconception of what course they should pursue or from anything but a deliberate choice that the quickest and most painless way to procure the Larson application and put Precision out of business was the method they chose.

Plaintiff cites *Goodyear Tire & Rubber Co.* v. *Overman Cushion Tire Co.*, 95 F. (2d) 978. In that case the plain-

tiff had made a contract to compensate an employee for continued services by a percentage of the recoveries in its pending suit in which the employee was an important witness and was about to leave his employment because of plaintiff's insolvent condition. The District Court and the Circuit Court of Appeals both held that there was no culpable conduct and that in fact the employer was put upon by the employee in the erroneous belief that the latter was an important witness in the litigation.

Plaintiff attempts to avoid the consequences of its failure to report Larson's perjury by the argument that it could have been charged with unclean hands only if all of the terms of the misprision statute (Title 18, U. S. Code, § 251) were met. This is not a prosecution for violation of that statute and the interpretations of the statute do not bear upon the question whether failure to report the crime by a litigant and his counsel may not be accepted by the trial court as evidence of unclean hands, for which the District Court may deny relief.

Plaintiff is mistaken in insisting that "the question of unclean hands is a matter for the application of local law" (Br. p. 51), as nothing could be more directly related to the law of the forum than the chancellor's concept of what conduct will bar a litigant from the court. Nevertheless, the Supreme Court of Illinois has, in a disbarment proceeding, very well stated the distinction between professional misconduct and violation of the criminal law in this passage from *People* v. *Macauley*, 230 Ill. 208, 213:

> "The standard of personal and professional integrity which should be applied to persons admitted to practice law in the courts is not satisfied by such conduct as merely enables them to escape the penalties of the criminal law."

Plaintiff overlooks the plain terms of the canons of

ethics which state the obvious and unquestionably proper rule applicable to this situation. We have heretofore answered plaintiff's argument that when it procured the assignment of the Larson application and the restraining covenants in the contracts in suit it was recapturing property which had been improperly taken from it. The facts upon which plaintiff makes that argument are premised unmistakably on the conclusion that Larson's proofs were perjured. That argument entirely overlooks the fact that the settlement effected between plaintiff and defendants in this case was not based upon any claim of compensation for liability or restoration of stolen property but was unmistakably an effort on plaintiff's part to take everything necessary to destroy defendants' business and to take it under no other compulsion than plaintiff's knowledge of Larson's crime and under the implied promise not to prosecute the criminals involved.

Plaintiff cites *Marbury* v. *Brooks*, 7 Wheat. (20 U. S.) 556. That case is not in point as the conveyance sustained by the Supreme Court was voluntarily given by the criminal without the knowledge or participation of his creditors so that there could have been no culpable conduct on their part. Plaintiff does not quote the concluding passage of that opinion (20 U. S. 581):

> "This court is of opinion, that in this, the Circuit Court erred, and that the deed is not void, unless Mar-

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The Canons of Ethics are more than a beacon for professional guidance. Their history is a long and honorable one. Distinguished counsel and a justice of this Court, David J. Brewer, were the authors (33 Reports of American Bar Ass'n., 57-86, 567-586). They have been enacted into statute (Wis. Rev. Stat. Annotated 1932, Sec. 139-15). They have been made rules of court (339 Mo. p. vii; 213 Calif. exiii). In Illinois the Supreme Court has held that they "constitute a safe guide for professional conduct in the cases to which they apply, and an attorney may be disciplined by this Court for not observing them." (*Hunter* v. *Troup*, 315 Ill. 293, 302)

> bury acted with the concurrence or knowledge of the banks, or unless they assented to it under some engagement, express or implied, to suppress the prosecution."

Plaintiff's next proposition of law, that to deny plaintiff relief on the ground of unclean hands would make defendants the beneficiary of their own misconduct, and that where "the parties are not *in pari delicto*, equity will give relief to the one that is comparatively innocent," is purportedly based upon *Leo Feist* v. *Young*, 138 F. (2d) 972.

In that case plaintiff brought suit for copyright infringement and the defense was urged that because plaintiff had failed to comply with a Wisconsin statute forbidding the brokerage of music and requiring direct licensing by the "true or original composer," plaintiff was barred by the doctrine of unclean hands. The Court of Appeals pointed out that powers conferred by the Federal Government cannot be nullified by State legislation and also held that—

> "The authorities cited by the District Court are not controlling here because the conduct of the plaintiff in them was fraudulent and directly connected with the issues being litigated, whereas here plaintiff has not been guilty of any inequity, unconscionable act, or wrongdoing towards the defendant." (138 F. (2d) 975.)

The Court then also pointed out that the failure to comply with the State license statute did not interfere with the prosecution of a tort action.

In the case now on review the wrong which the defendants attribute to plaintiff is one directly aimed at defendants and forms the transaction by which plaintiff acquired the Larson patent and the contracts which plaintiff seeks here to enforce. There is a direct relationship between the accused conduct and the rights plaintiff is asserting, as pointed out previously in this brief.

Plaintiff next cites *Woodall* v. *Peden, et al.*; 274 Ill. 301: In that case plaintiff had been wrongly accused of criminal relations with a granddaughter of plaintiff's wife and executed a deed under that compulsion. Plaintiff's suit was to set aside that deed. The Court granted plaintiff that relief on the ground that plaintiff was comparatively without fault. The statement of facts by the Court leaves it clear that equity was extending itself to redeem plaintiff from a gross imposition upon him, effected by false charges.

The next case cited by plaintiff is *Kapalos et al.* v. *Ganas et al.*, 242 Ill. App. 302, which involved an agreement between plaintiff and defendant to hold a fictitious foreclosure sale of plaintiff's property to defeat plaintiff's creditors. Some of the defendants and the supposititious purchaser took possession, immediately evicted plaintiff, and refused to convey to the plaintiff, who sued to set aside the pretended foreclosure. The Court held for the plaintiff on the ground that justice would better be served by allowing plaintiff relief than by allowing the defendants to profit by their fraud, basing the decision upon a finding that "Ganas had been guilty of fraud and foisted his scheme upon complainants" (p. 305) and that "the scheme was originated by the defendant, Ganas," (p. 306) and upon the case of *Herrick* v. *Lynch*, 150 Ill. 283, where, in a similar transaction, defendant was plaintiff's legal adviser and the author of the scheme to defraud. The Court held that it would not permit an attorney to use his power over a client to induce him to enter into a fraudulent contract and then invoke the doctrine of unclean hands against his former client to insure the retention of the profits of the fraud.

The Supreme Court of Illinois has repeatedly relieved plaintiff in spite of his unclean hands where the unequit-

able conduct of which he and defendants were guilty was contrived by defendants and imposed upon plaintiff by virtue of defendants' influence over plaintiff. *Duncan* v. *Dazey*, 318 Ill. 500, 524-525.

Herrick v. *Lynch* is cited by the Seventh Circuit Court of Appeals with approval in *Ford* v. *Caspers*, 128 F. (2d) 884, 885, where the Court points out:

> "There are a number of Illinois cases recognizing the rule that relief will not be afforded where the parties are *in pari delicto*."

In *Ford* v. *Caspers*, 128 F. (2d) 884, the Court had a situation comparable in every respect with that in *Kapalos et al.* v. *Ganas et al.*, 242 Ill. App. 302. Nevertheless, the Circuit Court of Appeals refused the plaintiff relief although it impressed upon defendant the benefits of their joint fraud.

In the examination of all of these cases we are warned against a technical adherence to any formulae that may be deducted from them, as previously pointed out in the Supreme Court's authoritative statement in the *Keystone Driller* case, 290 U. S. 240.

The true rule applicable to this argument is that stated in Pomeroy's Equity Jurisprudence (Third Edition, 1905) Section 403, where the author states the limitation upon the doctrine as a requirement that public policy must be advanced by granting relief to or restoring the plaintiff.

Plaintiff also cites *Carpenters' Union* v. *Citizens Committee*, 333 Ill. 225, and *Fagan* v. *Rootberg*, 320 Ill. 586. In both of those cases the Supreme Court of Illinois decided on the facts that the accused conduct of plaintiff did not affect defendants and, in fact, in the last cited case that the conduct complained of was actually to defendants' advantage.

Plaintiff also argues (Br. pp. 57-62) that the accused

conduct of plaintiff is unrelated to this suit, seeking to distinguish the case from the *Keystone Driller* case, 290 U. S. 240. In that case, although the misconduct of plaintiff was directed to only one patent of five in litigation, this Court held that the patents were related to each other as covering parts of the same machine and that there was therefore a direct relation of plaintiff's misconduct to all of its patents.

In this case the conduct of plaintiff is certainly no less reprehensible than that of the plaintiff in that case. Here the plaintiff is asserting against a single type of wrench three patents which, as applications, were all involved in the interference. The Larson patent was procured in the settlement of that interference and prosecuted to issuance in spite of its corrupt and lawless origin. The right of Larson to any property in the concept embodied in that application is both clouded by the collaboration of Thomasma and the appropriation of the concept from plaintiff. If Larson was in fact the sole inventor of the subject matter of that application, plaintiff never had any claim thereto, and the assignment to plaintiff under the compulsion of the discovery of Larson's perjury condemns plaintiff before this Court. If the Larson patent embodies, as plaintiffs contends it does, patent property stolen from plaintiff it is only because that patent incorporates the joint efforts of Thomasma and Larson, and the prosecution of the application as Larson's sole application condemns plaintiff in this Court. *Kennedy v. Hazelton*, 128 U. S. 667, 672.

Similarly, the contract which plaintiff exacted from Larson and Precision to respect the validity of the Larson patent and all claims that might issue therein, and the Zimmerman patents with all claims that might issue therein, in the face of plaintiff's knowledge of the crooked

career of the Larson application places that contract outside the Chancellor's aid.

Were this Court to extend to plaintiff the relief it seeks and close Larson's and Precision's mouths against speaking the truth about the Larson patent, this court would be perpetuating the wrong that began when Larson and Thomasma entered the conspiracy which plaintiff now condemns and the discovery of which enabled plaintiff to procure the Larson patent and the contract in suit.

Relief sought in this case cannot be separated from the Larson patent and the settlement contract, both of which are offered for enforcement in this Court. There is thus an inseparable relation between the objectives of this litigation and the properties which plaintiff procured by its discovery and suppression of the Larson perjury.

Conclusion.

The conclusion is inescapable that plaintiff has been guilty of unclean hands and that the judgment of the Circuit Court of Appeals should be reversed and that of the District Court affirmed.

Respectfully submitted,

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

Chicago,
January 27, 1945.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

NO. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY CO.,

Respondent.

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

FRANK PARKER DAVIS,
Attorney for Respondent.

ALBERT J. SMITH,
Of Counsel for Respondent.

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Respondent.

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

The opinion of the Court of Appeals alone is an adequate and complete answer to the present petition. The Court's recitation of the *facts* is not seriously challenged in the present petition or the supporting brief. The opinion on its face clearly demonstrates that the Court very painstakingly scrutinized and considered not only the pleadings, the voluminous testimony, and the numerous exhibits, but also the District Court's Findings of Fact and Memorandum, and applied sound legal principles to the actual facts of the case.

On the other hand, petitioners' counsel in their petition and brief very sketchily set forth a misleading and inaccurate version of only those few matters in the record which they think may bolster their petition. They also misconstrue and distort the Findings of Fact of the District Court and misinterpret the opinion of the Court of Appeals. They include misstatements of fact as parts of the "Questions Presented," and misapply the authorities to their unfounded versions of the facts, the findings and the opinion.

Petitioners' counsel may have adopted this course, because it is so obvious that there is no sound basis under Rule 38 of this Court for the filing of the petition. There are no "special and important reasons" warranting the granting of the petition. There is no question of general importance presented; and nothing whatever of public interest. It is merely a private controversy between the parties. The petition discloses nothing more than a desire to have this Court review the hundreds of pages of testimony and exhibits and readjudicate the case solely upon the facts which have been finally and correctly determined against the petitioners.

The Facts Found by the Court of Appeals Stand Virtually Unchallenged.

Nowhere in the petition or supporting brief do petitioners' counsel point out any error in the recitation of the *facts* which are so fully and ably set forth in the 15-page opinion of the Court of Appeals. Petitioners' statements concerning the facts (pp. 2, 14) certainly do not contain "all that is material to the consideration of the questions presented"—quoting from Rule 27a of this Court. Many *material* facts are entirely omitted by petitioners' counsel and they misinterpret or erroneously state others. Were it not for the opinion of the Court of Appeals, we would feel called upon to make here a full statement of the case. However, we accept that opinion as our statement of the facts and print it in the Appendix of this brief, with references in the margin to some of the Record pages supporting the fact findings and legal conclusions of that Court (pages 29 to 43, *infra*). For the convenience of this Court, we also print in the Appendix the Trial Court's Findings of Fact (p. 23-7, *infra*). The District Court's "Memorandum" is quoted in the Court of Appeals' opinion (p. 30, *infra*). Italics in this brief are ours unless otherwise indicated.

While we believe that the opinion of the Court of Appeals itself sufficiently demonstrates that the petition is entirely without merit, yet we feel it is our duty to point out specifically to this Court some of the many erroneous, misleading and unfounded statements and contentions which petitioners make and upon which they rely in urging the granting of the petition. (*Furness, Withy & Co.* v. *Yang-Tsze Insurance Ass'n*, 242 U. S. 430, 433-4.

Re Petitioners' Misrepresentations With Respect to the Evidence.

On page 7 of the petition is the bald statement that Larson filed the application as the sole inventor "when it was clearly developed by applicant and another," implying of course that the claims, as filed, covered a joint invention of Larson and Thomasma. That is not true. Indeed, petitioners pleaded neither perjury nor fraud in the filing of the Larson application. They asked for no finding upon it (R. 1117-1120). The District Court made none (p. 23, *infra*). But the Court of Appeals (p. 31-2, *infra*) did discuss and find as to the facts and expressly said "This [the feature of the claims], we think the evidence clearly discloses, was *Larson's* contribution, and it was so asserted at the trial by Alberts." (He was the solicitor who prepared and filed the Larson application and Snap-On's original and first amended Petition for Declaratory Judgment in this case and was a witness for petitioners at the trial.) With respect to petitioners' contention to the contrary, the Court expressly found "This record does not warrant such conclusion" (p. 42, *infra*). Thomasma, while respondent's trusted employee, did propose to Larson the developing of a wrench from the Automotive wrench, but Larson contributed the "tailpiece for operating a gauge mechanism" to which the claims "were limited" (p. 31, *infra*).

Also on page 7 of the petition is the groundless statement that respondent's attorneys "procured documentary proof of the perjury." Petitioners leave this Court and us in the dark as to what the "documentary proof" is. They could hardly have had in mind the drawing, which was made by Thomasma and offered in evidence in the Interference as the earlier work of a highschool boy hired by Larson, because that drawing gives no hint of lack of authenticity or misdating, and neither a competent handwriting expert nor Thomasma's brother was able to advise respondent's attorney that the drawing was made by Thomasma (R. 308-9, 648, 757-9). And it would be absurd to say that the Thomasma affidavit was "documentary proof" as it was nothing but a transcription of an unconfirmed, unfested *ex parte* story told by a man who had been disloyal to respondent and who was seeking revenge against his co-conspirators, Larson and Carlsen, because they were trying to force him out of Precision (p. 33, *infra*).

On page 15 of petitioners' brief is the assertion that Thomasma "disclosed the facts (Finding 6, R. 1123)" one Sunday evening to respondent's president, Wacker, and his attorney. Clearly the Finding does not support this misleading assertion; — if it had, petitioners' counsel would have done well to have quoted the language of the finding. The Court of Appeals (p. 33, *infra*), after stating that at such meeting Thomasma attempted to sell his Precision stock to respondent's president, specifically found that Thomasma "then asserted he had given Larson the idea of developing a wrench from the Automotive wrench, but he disclosed no specific facts with respect thereto."

On page 16 of petitioners' brief is the assertion that "plaintiff's attorney laid down a twenty-four hour ultimatum for settlement (R. 903)." That, too, is untrue, as the ultimatum was not submitted, conveyed or "laid down" in any shape or form by plaintiff's attorneys to Hobbs (R. 584, 688-9, 780).

On pages 16 and 17 of the petitioners' brief are the statements that "Larson's attorney confronted Larson with the disclosure and Larson appointed another attorney, M. K. Hobbs", that after the ultimatum had been "laid down" Hobbs "withdrew", and that later "Hobbs resumed representation of Larson." These statements convey the impression that Hobbs was playing fast and loose with his client. The actual facts are as follows: Larson, at Alberts' suggestion, "employed Hobbs to settle the interference with plaintiff and for no other purpose" (p. 34, *infra*). Alberts remained Larson's attorney of record in the Patent Office and he "did not withdraw his own appearance in the Patent Office" (p. 35-6, *infra*). Hobbs withdrew as settlement attorney only because he concluded that "all efforts of settlement had failed" (P. E. 33, R. 878) in view of circumstances related by the Court of Appeals (p. 35-6, *infra*). Petitioners' counsel pleaded compounding of perjury, etc. without inquiring of Hobbs as to the true facts (R. 600). They did consult with Hobbs shortly before the trial (R. 625-28) but did not call him as a witness. In order that no testimony or facts would be withheld from the District Court, respondents' attorneys subpoenaed Hobbs, who had represented Larson and Precision in the interference settlement negotiations.

On page 18 of their brief, petitioners' counsel state that plaintiff's attorneys instructed the reporter, who took the interference testimony, to deliver his notebooks over to Alberts and that the testimony was never fully transcribed. Standing alone these statements may imply that respondent's attorney was trying to do away with evidence. The Court of Appeals fully reviewed the *facts* and found "There is no merit in this [petitioners'] contention" (p. 41, 42, *infra*).

On page 19 of petitioners' brief is the statement that, after the settlement, Thomasma was "a frequent and intimate correspondent of plaintiff's attorney and president,"

and that after this suit was filed respondent paid Thomasma $200.00 and gave him a second hand tool. The inference, if one was intended, that respondent and its attorney were bribing Thomasma is not commendable, particularly in view of the entire truth. Thomasma did considerable experimental work *at his own home* on various devices of the types Automotive was interested in. He was paid a shaping machine and $200.00 for his "*services, disbursements* and *expenses*" in June 1942 (Receipt, Def. Ex. 27, R. 1020. There was no gift. The shaping machine was for use in making models for Automotive. The alleged "frequent and intimate correspondence", except for one exchange of letters between Thomasma and respondent, related to this work (R. 949-50, 1021 to 1032, 1034-36, 1039).*

In the petition and supporting brief are positive statements that the District Court found that respondent and its attorneys "*learned*" or "*discovered*" that Larson had committed perjury (pp. 3, 8, 13). The District Court made no such finding. It simply found that the attorneys "knew that Larson knew his interference proofs were "*insufficient*" (Finding 11, p. 26, *infra*). The Court of Appeals in its opinion specifically said (p. 40, *infra*):

> "The court did not find that, on or before the contracts and assignment were executed, plaintiff or its attorneys *knew* that Larson's proofs were perjured. The defendants' requested finding No. 11 was to that effect, but the court's finding No. 11 substituted the word '*insufficient*' for the word "*perjured*'."

Petitioners' counsel do not face the true facts as found by the Court of Appeals. On the contrary, they attempt to

*By implying an improper relation between respondent and Thomasma, petitioners' counsel may have hoped to counterbalance any taint that may have attached to Snap-On, Johnson and Alberts by reason of their uninterrupted relationships and dealings to the date of the trial, with the confessed perjurers, Larson and Carlsen (p. 39, *infra*).

support their position, that respondent "learned" of the perjury, by distorting the record and refraining from stating "all that is material to the consideration of" this matter, as we will now show.

On page 16 of their brief, petitioners' counsel quote but a small part of the letter of December 19, 1940 from respondent's attorney to Alberts, but they wholly fail to relate any of the facts or circumstances occasioning that letter. The Court of Appeals (p. 36-7, *infra*) quoted more of the letter and succinctly and accurately stated many of the attendant facts and circumstances—which are not challenged by petitioners' counsel in the petition or brief. They could not deny them, so they quote (Brief, p. 17) two questions and answers from the testimony of plaintiff's attorney and draw the astounding inference that the testimony disclosed "positive knowledge of Larson's admission that his proofs of priority to Zimmerman were false". They even go so far as to say (p. 19) that the testimony shows "irrebuttably positive knowledge of Larson's perjury before the settlement was effected". We say "astounding" because there is nothing in the quoted testimony about the proofs being false and petitioners and their attorney, Alberts, did everything possible to conceal the perjury from respondent and its attorneys, and to deny the confession which Larson had already made to Alberts and Johnson, Snap-On's president. That brings us to Alberts' letter of December 19, 1940 (R. 1063) which is very "material" but so embarrassing to petitioners that their counsel do not mention it.

Portions of the Alberts' letter are quoted by the Court of Appeals (p. 37, *infra*), which noted that Alberts wrote the letter "three weeks after he had heard Larson's confession." The letter is so significant that we requote por-

tions of what the Court of Appeals quoted and additionally quote a further sentence from the letter:

> "The *only* evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28, 1940. *That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson* (R. 1064).
>
> . . . . . .
>
> "*I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker.* Present corroboration of the competent type with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any further phase of the case for the present" (R. 1066).
>
> . . . . . .
>
> "He [Larson] still is entitled to counsel and I do not expect you will deny that the Bill of Rights and the Constitution of the United States afford him the privilege even if everything Thomasma has said should be taken as the gospel truth (*which is quite a swallow for anyone*)" (R. 1067).

Obviously, Alberts with the knowledge of Johnson, Snap-On's president (R. 458), was deliberately deceiving respondent's counsel about Larson's confession to them. And to lend support to their misrepresentation, Alberts pointed out that Thomasma, respondent's former traitorous employee and Larson's revengeful co-conspirator, was unworthy of belief and that his word could not stand against the interference testimony of Larson and his eight witnesses. This was also the view of respondent's attorneys.

As stated by the Court of Appeals (p. 40, *infra*) respondent's attorneys

> "did not think that the uncorroborated evidence of their traitorous former employee would be accepted as against Larson's nine witnesses. This was Albert's opinion, as expressed in his letter to plaintiff's attorneys on December 19, and also the opinion of those disinterested persons whom plaintiff's counsel consulted."

And petitioners do not inform this Court that respondent's attorney testified (R. 699) and Alberts admitted at the trial (R. 431) that, upon receiving Alberts' letter, respondent's attorney advised Alberts that the latter had misconstrued the December 19 letter of respondent's attorney and that he was making no accusations in that letter.

And petitioners' counsel do not inform this Court of the opinions "of those disinterested persons whom plaintiff's counsel consulted", advising against taking the matter to the Patent Office or the District Attorney. The Court of Appeals (p. 33, 34, *infra*) sets forth the substance of the opinion of one "outside attorney of good standing and large experience". The opinion of another attorney to the same effect is found on pages 825-6 of the Record.

And too, petitioners' counsel do not inform this Court that, as found by the Court of Appeals (p. 33, *infra*), that:

> "Automotive, after protracted efforts and considerable expense, was unable to secure anyone who would verify Thomasma's statements, but it learned from its investigation that Larson and Thomasma were then unfriendly and that Larson and Carlsen were trying to force Thomasma out of Precision."

As a matter of fact, the investigation by outside investigators, who could not find anyone who would verify Thomasma's statements (R. 277-78), cost nearly $5,000.00, the effort and expense per week were about doubled after Thomasma made his statement to respondent's attorney, and even after the agreements were reached the investiga-

tion was continued for two weeks at an expense of $565.00 (D. E. 26, R. 1020). Respondent's attorney personally interviewed several persons without success (R. 757-59).

Petitioners' counsel would have this Court believe that respondent "demanded and procured" the interference settlements by reason of "documentary proof of the perjury" (Petition p. 7). We have already shown that respondent did not know of the perjury, and had no documentary proof of it. And the assertion that respondent "demanded" the settlement is likewise not true as established by the Record. It was Hobbs, at the suggestion of Alberts, who made the first suggestion of settlement and who first made a definite proposal (p. 35, *infra*). Respondent was agreeable to accepting only a simple concession of priority (R. 731), but it was not given. Snap-On held title to the Larson application. Snap-On and Alberts, to whom Larson had already confessed his perjury, haggled for terms and notified respondent's attorneys and Hobbs that Larson would not be allowed to file a concession of priority unless the terms were met, and Alberts wrote Snap-On "My effort all along has been to stiffen Larson's position so that he would not leave Snap-On * * * holding the bag—contract or no contract * * *." The findings of the Court of Appeals (p. 35-7, *infra*), on these matters are wholly ignored by petitioners' counsel.

Petitioners' counsel, by asserting that respondent "demanded" a settlement, apparently hope, merely by way of innuendo, to convey the impression to this Court that respondent and its attorneys employed duress in connection with the settlement, notwithstanding that petitioners' counsel did not ask the District Court to make any such finding (R. 1117-20), the District Court made none, and the Court of Appeals found that there was no duress (p. 40, 41, *infra*). The Court of Appeals specifically found that

Alberts' "inferences" of threats were "mere products of his imagination" and that Johnson had testified that "neither he nor his company was coerced into signing the agreement either directly or indirectly". Furthermore, the Court of Appeals pointed out that respondent's attorneys and Hobbs denied there were any threats. Respondent and its attorneys had no contact or communication with the perjurers Larson and Carlsen, except that one of respondent's attorneys attended the taking of Larson's and Carlsen's interference testimony. And as said by the Court of Appeals (p. 41, *infra*)

> "Moreover, Larson testified that the agreement contained somewhere near a reasonable settlement, and his attorney Hobbs said that it was a fair one, and so advised him when he signed it."

Still further, the settlement terms did not differ materially from those initially proposed by Hobbs (p. 35, *infra*). Respondent received title to the Larson application in lieu of the royalties which had been initially proposed by Hobbs.

Petitioners' Distortion of the District Court's Findings, Memorandum and Court of Appeals' Opinion.

Petitioners' counsel clearly (Pet. p. 6) are in error in stating that:

> "The Court of Appeals ignored the salient facts that the Larson patent was conceived in fraud and supported by repeated fraudulent oaths of the applicant in the United States Patent Office."

We have already shown (p. 3, *supra*) that the Court of Appeals found *on the facts which it recites*, that the patent was *not* conceived in fraud. As to the two false Larson oaths, prepared by Alberts and filed in the Patent Office, the Court of Appeals certainly did *not* "ignore"

them (p. 32, *infra*), and those oaths had to do only with the interference claims suggested by the Patent Office to Larson and adopted for interference purposes, and which were later cancelled from the Larson application (Finding 14, p. 27, *infra*).

On page 15 of petitioners' brief, their counsel erroneously say that the District Court "found expressly" in Finding 10 (p. 26, *infra*), "that Larson would have prevailed in the interference if his claimed dates and the proofs taken by deposition in support thereof were true". All the Court found was that if the proofs were true Larson "would have proved priority of invention two or three years earlier than Zimmerman", which is a very different thing from holding he would have prevailed. Larson claimed he reduced to practice in 1934 and he did not file until over four years later and long after Zimmerman had filed. There was therefore a serious question of abandonment (R. 813-4, 1084-85) and his proofs could have been "insufficient" for that reason. It is most significant that the Court's Finding 10 is the same as petitioners' proposed Finding 10 (R. 1120) *except* that the Court *refused* to find further, as requested by petitioners, that "there was no occasion for Larson's concession of priority to Zimmerman and the agreements of December 20, 1940, unless Larson admitted the falsity of his proofs."

The burden of petitioners' attack upon the opinion of the Court of Appeals, as appears throughout the petition and supporting brief, is founded upon the assumptions that (1) the District Court's finding in its Memorandum that "Hobbs did not testify falsely" was a "random observation" or "remark" (Petition p. 6, B. p. 22), that (2) the "observation" was in conflict with the District Court's Findings of Fact (Pet. p. 6, B. p. 22), and that (3) the Court of Appeals reached its conclusion "by a tortured argument based upon" the "observation" (Pet. p. 5), and "treated

this 'Memorandum' as an opinion superseding the explicit findings of fact filed at the same time" (Pet. pp. 6, 7) and consequently "scrapped all of the findings of fact of the District Court" (Pet. p. 6, B, pp. 20, 22). *These assumptions are utterly without foundation.*

We do not understand how petitioners' counsel could seriously characterize as a "random observation" or "remark", the District Court's special finding that "Hobbs did not testify falsely". The Memorandum, except for the withdrawal of the oral opinion, was confined to that matter. The finding was made only after the Court had "re-examined the record", as stated in the Memorandum. The Memorandum was entered simultaneously with the findings of fact. And petitioners' contention that the special finding in the Memorandum was in conflict with "explicit" findings of fact is also self-evidently without foundation. In not one of the Findings of Fact did the District Court pass upon the credibility of Hobbs or any other particular witness.

Certainly of the seventeen Findings, the Court of Appeals did not "scrap" Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 17, as is perfectly manifest from the opinion which analyzes and finds in considerably greater detail than did the District Court practically all of the facts stated in those findings. Indeed, the Court of Appeals did not "scrap" Finding 11 either. It is petitioners' counsel who misconstrue Finding 11, which at best is merely a fact conclusion or deduction and not a *fact* finding. The Court of Appeals did reject "Finding" 16. That so-called finding is not a *fact* finding; it is merely a conclusion or deduction of mixed law and fact and as such was subject to review. The District Court's fact findings themselves do not support the fact conclusion expressed in Finding 16, as stated and held by the Court of Appeals. Obviously this "Finding" 16 was not "scrapped" by the Court of Appeals

by a "tortured argument" based upon the special finding in the District Court's Memorandum that Hobbs had told the truth. And manifestly, the Court of Appeals did not treat this special finding as "superseding" the findings of fact.

What the Court of Appeals did in its opinion was exactly this: It first (to the middle of page 30, *infra*) stated the issues, as joined by the pleadings, and referred to the trial and the District Court's Memorandum, Findings of Fact and Conclusions of Law and the Judgment, all without comment. It then devoted and confined the next nine pages of its opinion (ending with the middle of p. 40, *infra*) to a careful and exact exposition of the facts as to the matters dealt with in the District Court's fact findings and as to the only conclusion upon which the judgment was based, i.e., respondent's unclean hands by reason of its silence. Concerning this issue the Court of Appeals found that respondent's hands were not unclean (p. 40, *infra*), stating "We are convinced that the findings of fact, *with respect to plaintiff*, are *not* supported by substantial evidence" (p. 43, *infra*). Throughout these nine pages (ending in the middle of page 40, *infra*) no reference of any kind is made to the District Court's Memorandum finding that Hobbs had told the truth. In the next two pages of its opinion (beginning with the middle of p. 40, *infra*) the Court of Appeals meticulously analyzes the facts as to the criminal charges of compounding a felony and coercion pleaded against respondent and its attorneys. *It is only in connection with those charges that the Court of Appeals discussed the Memorandum and gave weight to the special finding that "Hobbs did not testify falsely,"* as supporting its own independent conclusion that (p. 42, *infra*)

> "We are convinced that the contradicted testimony of Larson, Carlsen, Alberts and Johnson has *no* probative value and cannot be considered as substantial evidence in the light of this record."

Naturally the Court of Appeals took into account that Carlsen and Larson were perjurers. The Court also re-

ferred (p. 41, *infra*) to Alberts' testimony as being "quite inconsistent" and based in part on "his imagination", and noted that Johnson testified neither he nor Snap-On were "coerced * * * directly or indirectly."

We also may well mention the following facts: Alberts, with Johnson's backing, first pleaded (R. 71), solely on behalf of Snap-On, the alleged compounding of felony, though it might send his former client, Larson, to the penitentiary. Alberts accused Thomasma's attorney of having spoiled Larson's chances in the interference (R. 859 to 861). Alberts testified that "the first time I ever employed" Raftery, the reporter, was in connection with the Larson interference" (R. 447), and this was untrue (R. 663). Alberts and Johnson, after Larson had confessed his perjury to them, did everything they could "to stiffen Larson's position", and prevent him from filing in the Patent Office a simple concession of priority to which they knew Zimmerman was entitled and which would have ended the interference (Opinion, bottom p. 36, *infra*).]

The District Court entered no findings on petitioners' criminal charges and petitioners requested none, and therefore it inevitably follows that the facts found by the Court of Appeals and its conclusion that the charges were without merit, could not be in conflict with the Findings of Fact entered by the District Court. Petitioners do not even challenge in their petition or brief the Court of Appeals' fact findings and conclusions as to these charges.

Re Petitioners' Authorities.

It is manifest from what we have just said that the authorities (B. pp. 20, 21), which petitioners' counsel cite and quote from to the effect that the Appellate Court is "not at liberty to refer to the opinion for the purpose of eking out, controlling or modifying the scope of the findings,"

have *no* application to the true facts present here. Those authorities therefore merit no discussion except possibly to note that in *Webb v. Frisch*, 111 Fed. (2d) 887 (C. C. A. 7th) cited on page 24 of petitioners' brief, the District Court made findings as to a prior use and in a separate "memorandum" made specific findings as to the truthfulness of two witnesses and the Court of Appeals gave the testimony the "credibility and weight which the District Court attached to it" in the "memorandum" (p. 888).

And it is equally clear that the labored proposition and argument (B. pp. 21-22) that the decision of the Court of Appeals violates Federal Rule 52a and is in conflict with decisions of other courts, is without foundation. In the instant case the Court of Appeals properly overthrew the fact conclusion with respect to respondent's unclean hands because it was "not supported by substantial evidence" (p. 43, *infra*) and was therefore "clearly erroneous" under the Rule. And correspondingly the Court of Appeals overthrew conclusions of law because they were "not supported" by the findings of fact (p. 15, *infra*). Therefore the Court of Appeals' decision is wholly consistent and in accordance with the provisions of Rule 52a and many cases thereunder.

> "The findings of fact of the court below to the extent that they are unsupported by substantial evidence, or are clearly against the weight of the evidence, or were induced by an erroneous view of the law, are not binding upon this Court." *Aetna Life Ins. Co.* v. *Kepler*, 116 Fed. (2d) 1, 5 (C. C. A. 8th).

> "The sufficiency of the evidence to sustain a trial court's conclusion or finding of an ultimate fact remains appropriate matter for an appellate court's consideration." *Kuhn* v. *Princess Lida*, 119 F. (2d) 704, 706 (C. C. A. 3rd).

And certainly with respect to the Court of Appeals findings and conclusions as to the criminal charges—upon which

the District Court made no findings—the Court of Appeals in giving weight to the District Court's special finding that Hobbs did not testify falsely, properly complied with the express provision of Rule 52a that "due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Petitioners conclude their brief on page 24 with the assertion that the Court of Appeals' opinion is in conflict with its own application of Rule 52a in *Webb* v. *Frisch*, 111 Fed. (2d) 887, and then they pose an involved question as to the power of the Court of Appeals to "substitute its judgment of the credibility of the witnesses", when the District Court had "reported" that the testimony was in "irreconcilable conflict". Finally they state that this is "an important question of federal procedural law which this Court has not decided and should decide".

There is no conflict between the Court of Appeals' opinion here and its opinion in the *Webb* case because in the opinion here the Court of Appeals, in giving weight to the District Court's special finding that Hobbs had not testified falsely, fully conformed to what it said in the *Webb* case, as follows:

> "We must attach to the testimony of witnesses the full weight and quality of credibility which the trial court gave it".

Certainly the Court of Appeals did not "substitute its judgment of the credibility of the witnesses" for the judgment of the District Court, which made no specific findings other than that in its Memorandum, as to the credibility of any witness.

It cannot be, as petitioners perhaps intend to postulate, that the irreconcilability found by the District Court was disregarded by the Court of Appeals, because the opinion of that Court shows the contrary, as demonstrated by petitioners' own quotation from that opinion in the following passage appearing on page 24 of petitioners' brief:

> "The Circuit Court of Appeals itself found 'conflicts in the evidence' which 'cannot be reconciled so as to believe all the testimony of these three witnesses.'"

Indeed, it was the finding by the District Court "that Hobbs did not testify falsely" which led the Court of Appeals to speak as in the quotation petitioner uses, followed by the statement:

> "However, the District Court informs us that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith."

So what can be the "important question of federal procedure which this Court has not decided and should decide"?

Petitioners in contending (Pet. pp. 7, 8, 9, B. pp. 11, 13) that the Court of Appeals' decision, "reversing the findings of unclean hands is in direct conflict" with other decisions, apparently relies primarily on the *Driller* case (*Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240). Petitioners' counsel found it necessary, however, to dress up their proposition and the first of the "Questions Presented" with the unwarranted premises that the Larson patent was conceived in fraud and respondent had "learned" of the perjury and demanded and procured the settlement in view of it. The District Court did not so find and the Court of Appeals found there was no substantial evidence supporting petitioners' premises. The real ulterior purpose of the petition, dressed up as it is, is to seek a review of the Court of Appeals' opinion as to the evidence on these matters and have this Court readjudicate the case on the facts, notwithstanding that this Court has repeatedly and consistently held that it will not grant, for such purpose, a petition for writ of certiorari. (*Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508; *United States* v. *Johnston*, 268 U. S. 220, 227.)

If it were assumed, *arguendo*, that respondent had "learned" of the perjury and thereafter remained silent, the *Driller* case still would not be in point. In that case, this Court decided that respondent's hands were unclean because respondent had used, as a basis for a preliminary

injunction, a decree which declared one of the patents to be valid and which had been entered in a prior suit in connection with which plaintiff had paid for and suppressed prior use evidence. It was because of the misuse of the decree that this Court found that respondent's hands were unclean as to the several patents in suit. In the instant case, the present respondent was not guilty of any fraud or crime nor did it deceive or attempt to deceive any Court or the Patent Office. It was Larson and his associates who committed the perjury and respondent and Zimmerman had no hand in it.

Furthermore, the present case is distinguishable from the *Driller* case in that in the present case the alleged misconduct of respondent, claimed to constitute unclean hands, bore no relation whatever to the issues of validity and infringement of the patents in suit or to the issues of validity and breach of the contracts. Plaintiff's alleged failure and its public duty to inform the authorities in no way affects the equitable or legal rights between the parties on any of the patent or contract issues.

This Court and other Federal Courts, as well as the Courts of Illinois* are in accord that the alleged misconduct, constituting unclean hands, must have been in regard to the subject matter in litigation and must have affected the equitable rights between the parties to the litigation. The Rule is well expressed by his Court in the very *Driller* case, relied upon by petitioners, as in that case the Court said (p. 245):

> "But courts of equity do not make the quality of suitors the test. *They apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation. They do not close their doors because of plaintiff's misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect*

*Feist, Inc. v. Young, 138 Fed. (2d) 972 (C.C.A. 7th); Carpenters' Union v. Citizens Committee, 333 Ill. 225, 249-50; Fagan v. Rootberg, 320 Ill. 586, 596.

the equitable relations between the parties in respect of something brought before the Court for adjudication. Story id. Sec. 100.[2]

Furthermore, in the *Driller* case the fraud practiced by the respondent was wilfull and intentional. In the instant case, on the other hand, even if it is assumed that the suspicion of respondent's attorneys should have required them to take the matter up with the proper authorities, their view to the contrary, as supported by the advice of competent outside counsel, was at most a misapprehension of legal responsibilities. The authorities are predominantly to the effect that conduct carried on in good faith and which is not willful or intentional, as distinguished from mistake, inadvertence or misapprehension of legal rights or responsibilities, does not constitute unclean hands.*

The petitioners also cite *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. . . . in support of their unfounded proposition. The facts of that case were very similar, indeed, to those of the *Driller* case and it does not support petitioners' proposition for exactly the same reasons. Indeed, in this *Glass* case, this Court did grant the relief sought by Hazel-Atlas, which, after it had acquired at least as much information as to Hartford-Empire's fraud in the Patent Office as respondent had of Larson's perjury, settled the patent controversy and remained silent for ten years. In the instant case, very shortly after petitioners pleaded Larson's perjury, respondent's counsel called the matter to the attention of the District Court, as noted in the opinion of the Court of Appeals (p. 39, *infra*).

The Courts have consistently applied the rule of "moral estoppel" to prevent one from profiting by his own wrong particularly where, in comparison with the conduct of another, to so do would countenance morally reprehensible

Ohio Oil Co. v. Sharp, 135 Fed. (2d) 303, 308-9 (C. C. A. 10, 1943); *Lafrette et al. v. First Nat. Bk. of Mobile*, 178 So. Rep. 3, 6 (Sup. Ct. Ala., 1937); *Valley Smokeless Coal Co. v. Manufacturers Water Co.*, 153 Atl. Rep. 327, 329 (Sup. Ct. Pa. 1930); *Green v. Feder*, 57 S. W. Rep. 519, 525 (Ct. of Ch. App. Tenn. 1900); *Steem Electric Corp. v. Hirzfeld Phillipson Co. et al.*, 118 Fed. (2d) 122, 127-8 (C. C. A. 7th 1940); *Fidelity & Deposit Co. v. Grand Nat. Bk.*, 69 Fed. (2d) 177, 183 (C. C. A. 8th).

acts thus resulting in greater offense to morals, good conscience and public policy.* A court will not aid a litigant in the promotion of fraud and, where good conscience requires it, will apply the rule that where the parties are not *in pari delicto*, relief should be given the one that is comparatively innocent. It is axiomatic that a Court under such circumstances will not invoke a maxim of equity to defeat equity.

The other two cases cited by petitioners' counsel. (B. p. 9) the *Morton Salt Co. v. Suppiger Co.*, 314 U. S. 488 and *Meredith v. Winter Haven*, 320 U. S. 228, are obviously not in point. In the *Salt* case, the patent owner was operating outside of the patent monopoly by controlling the sale of unpatented salt tablets. In the *Meredith* case, the sole question was whether the Court of Appeals rightly declined to exercise its jurisdiction in a suit arising with respect to bonds issued by the city of Winterhaven and there was no issue of unclean hands.

CONCLUSION.

We submit that there are no "special and important reasons" for granting the present petition,—certainly none of the character of those specified in Rule 38 of this Court, nor can we see that there is any other reason advanced that gives petitioner any standing here. We submit that the petition is wholly without merit and should be denied.

Respectfully submitted,

FRANK PARKER DAVIS,
Attorney for Respondent.

ALBERT J. SMITH,
Of Counsel for Respondent.

Chicago, Illinois,
September 8, 1944.

*Feist, Inc. v. Young, 138 Fed. (2d) 972 (C.C.A. 7th); *In Re Wilkins Estate*, 241 N. W. Rep. 652, 655-56 (S. C. Wis.); *Harris v. Harris*, 93 So. Rep. 841, 844 (S. C. Ala.); *Boston & Worcester R. R. Corp. v. Dana*, 67 Mass. Rep. 83, 99; *Woodall v. Peden et al.*, 274 Ill. Rep. 301, 306; *Kapalos et al. v. Gauss et al.*, 242 Ill. App. 302, 306-7.

APPENDIX.

IN THE UNITED STATES DISTRICT COURT.

(Caption 4382 and 4451)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause, Consolidated of Civil Actions No. 4382 and 4451, having come on to be heard for the entry of Findings of Fact and Conclusions of Law, and the Court having heard testimony herein for nine days, and having heard argument of counsel, the Court hereby enters the following Findings of Fact and Conclusions of Law:

Findings of Fact.

The Court finds as facts that:

1. Civil Action No. 4382 was brought as a suit in equity by plaintiff for infringement of three United States Letters Patent, respectively, Larson No. 2,279,792, Zimmerman No.

2,269,503 and Zimmerman Reissue No. 22,219 (formerly No. 2,283,888), all for Torque Wrenches, and to enforce a certain contract entered into between the parties hereto on December 20, 1940, in settlement of Patent Office Interference (No. 77,565) involving the three applications for the respective patents sued upon.

2. Among other defenses, defendants pleaded that during the Interference proceedings the party Larson testified falsely with respect to the dates of making a certain drawing (Larson, Interference Exhibit 27,—Defendants' Exhibit 9), and certain models (Defendants' Exhibits 7, 8) which were material and critical evidence upon the issues of the Interference, that plaintiff and its agents were aware that the testimony was false, and that plaintiff employed this knowledge, with threats of prosecution for perjury, and promises of suppression of the evidence, to procure the execution of the contracts in suit, payment to plaintiff of the sum of $500.00, and the transfer to plaintiff of the application for the Larson patent in suit, and plaintiff did thereafter suppress the evidence of the perjury and withhold making complaint to the proper officers, thereby compounding a crime, rendering the contracts in suit null and void, and infecting plaintiff's cause of action with unclean hands requiring its dismissal.

3. Civil Action No. 4382 was consolidated for trial with the suit of Snap-On Tools Corporation *vs.* Automotive Maintenance Machinery Co., Civil Action No. 4451, for declaratory judgment upon the same patents and a corresponding contract dated December 20, 1940, between those corporations, also executed in settlement of the Interference, in which the same defense was pleaded. Automotive, respondent in Civil Action No. 4451, filed a counterclaim against Snap-On (considered a defendant in the consolidated cause) charging infringement of said three patents mentioned in Paragraph 1 hereof, and also charging infringement of Patent No. 1,936,912. The defense of unclean hands was ordered tried separately from the patent issues made by the pleadings, in both Civil Action No. 4382 and Civil Action No. 4451, and these Findings of Fact and Conclusions of Law are entered upon the conclusion of that separate trial and are applicable to both of said causes.

4. Testimony has been heard in open court for nine days. All of the attorneys who concluded the agreements

of December 20, 1940 in suit, the presidents of the three corporations involved, and many other witnesses have been heard. The testimony is in many respects in direct conflict, both with testimony of other witnesses, pre-trial testimony, and the many documents in evidence.

5. That there was perjury in the Interference upon a material issue is pleaded, proven and conceded. Larson's evidence in that proceeding sought to establish a date of conception and reduction to practice in 1934, three years before he had done any work on the subject matter of the Interference, and almost three years before the earliest date claimed by Automotive through its inventor, Zimmerman.

6. Exposure of Larson's claimed dates in his Preliminary Statement led to expressions of disbelief by plaintiff's Attorney, an extensive investigation by private detectives, and the disclosure that one of the organizers, stockholders and officers of Precision Instrument Manufacturing Company (one George B. Thomasma) was a former employee of plaintiff and close associate of Zimmerman. Before Larson's testimony in the interference was concluded, Thomasma sought out plaintiff's president and revealed that he had brought the invention which was the subject matter of the interference to Larson.

7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt of the author's knowledge of the facts. In that statement, Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a high-school boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff, as proof of his claim.

8. Within a week after the execution of the Thomasma affidavit, plaintiff's attorney informed Larson's patent attorney of the information disclosed in the Thomasma affidavit and a week later Thomasma was examined orally in the office of plaintiff's attorneys before the president and attorney of Snap-On Tools Corporation (Petitioner in

Civil Action No. 4451, and sole outlet for Precision Instrument Manufacturing Company). Thereupon Larson was called before Snap-On's president and patent attorney (who had conducted the Interference proceedings on behalf of Larson) and explanation demanded. Larson admitted his perjury and was told to procure other counsel. Up to the time that Larson was confronted with and admitted perjury to his patent attorney, no one else up to that time was involved with that perjury.

9. Larson procured other counsel who immediately undertook efforts at settlement on his behalf. A number of meetings were held between the attorney for Snap-On, the attorney for Larson and Precision Instrument Manufacturing Company, and attorneys for plaintiff, a draft agreement was considered, the negotiations were once broken off, but were subsequently resumed and concluded on December 20, 1940 when the two agreements of that date, sued upon, were executed. By the terms of the Automotive-Precision-Larson contract (Defendants' Exhibit 4) Larson conceded priority to Zimmerman as to the common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was assigned to Automotive. Precision paid $500 to Automotive. Automotive licensed Precision and Larson to complete unfilled orders from Snap-On to the extent of approximately 6000 wrenches, any wrenches in excess of that number to bear a royalty of 10%. Automotive released Precision and Larson and their customers from liability for infringement by reason of the manufacture and use of previously sold wrenches and gave Precision and Larson a complete and general release as to all civil damages. Precision and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. The manufacture of wrenches for the unfilled orders was not completed until October, 1941.

10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman.

11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his Interference proofs were insufficient.

12. On December 26, 1940, plaintiff's attorney wrote the reporter who had reported the Larson Interference testimony, to deliver the remainder of the transcribed record and the notebooks (containing also some untranscribed notes) to Larson's attorney, who had engaged the reporter.

13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.

14. Plaintiff procured the Larson patent in suit (but not with the interference claims therein) by continuing the prosecution of the Larson application assigned to plaintiff in settlement of the Interference on December 20, 1940.

15. Plaintiff procured the contracts which it now seeks to enforce in these cases (the two cases now consolidated) in settlement of the Interference on December 20, 1940.

16. Plaintiff's conduct in remaining silent after securing the Thomasma affidavit and in seeking to exploit the contracts and patent application procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf.

17. Petitioner (Snap-On) in Civil Action No. 4451, claiming under and by virtue of Larson, must be denied relief on the same grounds.

Conclusions of Law.

I. This court has jurisdiction of the parties hereto and of the subject matter of Civil Actions Nos. 4382 and 4451.

II. Plaintiff comes into this court with unclean hands in Civil Action No. 4382.

III. The Amended and Supplemental Complaints in Civil Action No. 4382 are ordered dismissed.

IV. Petitioner comes into this Court with unclean hands in Civil Action No. 4451.

V. The Petition and Amended Petitions in Civil Action No. 4451 are ordered dismissed.

VI. The Counterclaims by respondent (plaintiff here) in Civil Action No. 4451 are ordered dismissed.

VII. There will be no award of costs.

Igoe,
United States District Judge.

July 12th, 1943.

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 8392. OCTOBER TERM, 1943, APRIL SESSION, 1944.

AUTOMOTIVE MAINTENANCE MACHINERY COMPANY,
Plaintiff-Appellant,
vs.
PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON and SNAP-ON TOOLS CORPORATION,
Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

June 26, 1944.

Before SPARKS and MAJOR, *Circuit Judges*, and LINDLEY, *District Judge*.

SPARKS, *Circuit Judge*. On June 15, 1942, plaintiff charged Precision Manufacturing Company, Kenneth Larson, and Walter Carlsen with infringement of United States patents to Larson, No. 2,279,792, and to Zimmerman, No. 2,283,888. By amended petition filed November 30, 1942, it further charged infringement of reissue patent No. 22,219, of which patent No. 2,269,503 was the original. These patents were issued, respectively, on April 14, May 19, and November 3, 1942, on applications filed respectively on October 1, 1938, November 22, 1937, and May 31, 1938. All of them relate to torque wrenches, and the applications were assigned to plaintiff.

The joint amended answer of the defendants, filed February 8, 1943, alleged that the defendant Larson had committed perjury by filing a false affidavit with the Commissioner in support of his patent, in an interference proceeding between that patent and the Zimmerman patent No. 2,283,888; that plaintiff knew of that perjury prior to December 23, 1940, and failed to divulge it to the proper authorities; that by reason of that knowledge it threatened the defendants with criminal prosecution unless the defendants would sign the contracts hereinafter referred to, and it promised defendants that it would suppress such evidence of perjury as it had, if defendants would sign the contracts; that under and by reason of those circumstances they signed the contracts against their will; that those contracts were unreasonable and unconscionable and their execution by defendants was procured by the inequitable conduct of plaintiff by which its hands were soiled to such an extent that its bill of complaint should be dismissed.

July 6, 1942, Snap-On Tools Corporation filed a petition for a declaratory decree relating to the controversy with respect to the Larson patent and the contract of December 20, 1940, which plaintiff and the defendants, Larson and Precision, had signed. In final form, by amended petition filed March 1, 1943, the facts therein alleged are substantially the same as set forth in the answers in the other suit. Automotive by way of answer and counterclaim set forth substantially the same allegations, and demanded practically the same relief as demanded in its original action.

By agreement, the two cases were consolidated for hearing on the sole question of inequitable conduct, and voluminous evidence was heard. At the close of the arguments, the District Court rendered an oral opinion on May 21, 1943, which is not in this record, and on July 12, 1943, it filed its special findings of facts, and rendered its conclusions of law thereon. At the same time it filed the following:

"Memorandum.

"In this case, the court rendered an oral opinion at the closing of the arguments. At the request of M. K. Hobbs, an attorney who testified in the case, the court has re-examined the record.

"It is not the intention of the court that the statements in the opinion should be construed as implying

that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct. Accordingly, the oral opinion is withdrawn and is not to be filed as a part of the record. The Court has entered written findings and conclusions. It appears from an examination of the record that the witness Hobbs did not testify falsely; that he has adhered to the rules which govern the relations existing between attorney and client and that he was not guilty of any professional misconduct or criminal act."

Upon the conclusions of law, and consistent therewith, the court rendered judgment dismissing the complaint, the amended and supplemental complaint of the first action, and the petition, amended petitions and the counterclaims of the second action, all for want of equity. It further ordered that there should be no award for costs. From that judgment Automotive has appealed. Plaintiff and the corporate defendants, including Snap-On, which is considered as a defendant herein, will be hereafter referred to respectively by the first word of their corporate names.

Prior to 1938, Automotive was engaged in the production of a torque wrench invented by Zimmerman, one of its employees, and Snap-On was one of its customers for that wrench. R.

In 1938, George Thomasma, one of Automotive's trusted employees, who was fully acquainted with its wrench business and with the Zimmerman developments, secretly gave information to the defendant Larson, and they, with one Carlsen, cooperated to establish a competing business with Automotive. Snap-On was approached by Larson with respect to its taking on the wrench which had been developed by him and Thomasma from the Automotive wrench. R.

On October 1, 1938, Larson filed his application for his patent above referred to, by Alberts, who was then attorney for both Larson and Snap-On. The application was assigned to Snap-On under the terms of an agreement between them dated September 28, 1938. R.

At that time the application did not claim anything that was common to the Zimmerman and Larson wrenches, but the claims, as interpreted by the disclosure, were limited to a detail which comprised a tail-piece for operating a gauge mechanism. This, we think the evidence clearly dis- R.

closes, was Larson's contribution, and it was so asserted at the trial by Alberts.

On October 18, 1938, Alberts, Snap-On's patent attorney, had Larson execute for Snap-on an affidavit to the effect that no employee or ex-employee of any competitor of Snap-On had anything to do with the development of his wrench, or would be associated with Larson in the enterprise; that he alone had invented it; and that no other individual had contributed any concept or feature of it.

R. 838-9

On October 26, 1938, Snap-On supplied Larson with a letter promising to place with him an order for a quantity of those wrenches. Larson thereupon solicited financial support for the enterprise which was calculated to take away from Automotive its wrench account with Snap-On, and in December 1938, Precision was incorporated. Larson and Thomasma were given stock for the work they had done on the wrench, and Carlsen was given stock for his services, and he also paid cash for some. Larson became president of that corporation, Thomasma was made vice-president, and Carlsen was made secretary and treasurer. The three comprised the board of directors, and Automotive's entire business from Snap-On was taken away by Precision.

R. 836

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Wacker, president of Automotive, had heard rumors that Thomasma, then in its employ, was one of the incorporators of Precision, and, without authority, had removed from the Automotive plant some tools and wrenches. In June 1939, he confronted Thomasma with those rumors. Thomasma denied his connection with Precision, but admitted he had removed some wrenches. Thereupon Wacker discharged him.

R. 494-7

On August 31, 1939, the Patent Office suggested to Larson certain claims appearing in the Zimmerman application. Thereupon, Larson through Alberts copied the broad Zimmerman claims in his application, and the Patent Office declared an interference on October 11, 1939, on the counts comprising those claims copied from Zimmerman.

R. 751-2

At the request of the Patent Office, Larson, under oath on August 5, 1940, gave the dates of his conception, disclosure, drawing, description and reduction to practice. Those dates were false and antedated Zimmerman's from one to three years.

R. 1084

Within a day or two after receiving a copy of Larson's preliminary statement as to his dates, Automotive author-

R. 747-8

ized its attorney to conduct an examination of the facts alleged therein. For that purpose he employed an investigator who had performed similar work for him in years past.

Larson was required to produce his evidence first. Nine witnesses, including himself, were examined, and considerable documentary evidence and physical exhibits were received in evidence on his behalf, the hearing of which began October 24 and ended November 4, 1940. It substantiated Larson's early dates, and cross-examination failed to discredit it. P. Ex. 68 R. 911

On November 3, 1940, the day before Larson closed his proofs, Thomasma and his attorney attempted to sell Thomasma's Precision stock to Wacker, president of Automotive. He then asserted that he had given Larson the idea of developing a wrench from the Automotive wrench, but he disclosed no specific facts with respect thereto. Wacker refused the offer. R. 304 500-2 753-4 924

On the evening of November 7, 1940, Thomasma voluntarily went to the home of Fidler, the attorney for Automotive, and also returned there the following evening. During those times he voluntarily made a statement with respect to his and Larson's work on the wrench. It was taken down in shorthand, transcribed, and sworn to by him on November 15, 1940, and is quite voluminous. He stated therein that Larson came to his home in November 1937, where they discussed the possibility of making a tension wrench, and at that time he showed Larson a socket, a piece of drill rod and a handle; that Larson then made some patterns, and that several wrenches were made by Larson before any drawings of the wrench were made. He further stated that he made a drawing of the device in June 1938, and that it was the same drawing offered by Larson in the interference as the work of a high school boy on May 20, 1936. Automotive, after protracted efforts and considerable expense, was unable to secure anyone who would verify Thomasma's statements, but it learned from its investigation that Larson and Thomasma were then unfriendly and that Larson and Carlsen were trying to force Thomasma out of Precision. R. 755-7 952 962 962 963 965-7 R. 281 277-8 757-9 930

On November 18, 1940, Automotive's attorney, Fidler, submitted to an outside attorney of good standing and large experience, the question as to whether he should submit

R. 759-760 the matter to either the Patent Office or the District Attorney. He was then and there advised not to submit it at that time to either, as the Patent Office would not consider it until plaintiff's proofs were in, and the District Attorney would not touch it so long as the priority proceeding was pending. He further advised in effect that on account of plaintiff's paucity of proof, and the former disloyalty of its only witness, it could not hope to discredit the nine witnesses whose testimony had supported Larson's priority, and that a suit for damages by the defendants might ensue. He suggested that the better way would be to take the matter up with the attorney for Larson and Snap-On.

R. 521-2-761 On November 20, 1940, Fidler informed Alberts of the contents of the Thomasma affidavit, and Alberts arranged for a meeting on November 28, 1940, which was attended by himself, Fidler, Thomasma, Snap-On's president, and 403 Automotive's president and vice-president. There Thomas-765-7 ma related his story in substantial accord with his affidavit, 674 whereupon Alberts said he would withdraw as attorney for 178 Larson if the facts, as stated by Thomasma, were true. However, he remained Larson's attorney of record in the Patent Office until December 24, 1940, when Larson's application was assigned to plaintiff, as hereinafter referred to.

R. 179-180 409-11 On the same day, Alberts and Johnson called Larson and Carlsen in consultation, and told them the substance of Thomasma's statement. Alberts said to Larson that if the statement were true, he should get another lawyer, and he recommended any one of three attorneys, including Mr. Hobbs. At that meeting Larson reluctantly confessed that part of his testimony was false. Thereupon he and Carlsen left the room. The substance of this conversation was not disclosed to plaintiff nor to its attorney. The next day on November 29, Larson and Carlsen employed Hobbs to settle R. 578-1047 the interference with plaintiff, and for no other purpose. They then notified him that they were willing to concede priority to plaintiff.

R. 577 Earlier on the same day, Alberts had communicated with Hobbs, and told him that there was an interference between Zimmerman and Larson. He also said that Thomasma in his affidavit had attacked the originality and date of Larson's drawings, and that he was afraid they were not true, and he thought the interference suit should

be settled. Hobbs has never seen Thomasma's affidavit, nor any of the interference evidence, and no one at that time had ever told him that Larson and Carlsen had perjured themselves. Larson, Carlsen and Alberts testified that they told Hobbs of the perjury on that day, but Hobbs denied this, and the District Court tells us by this record that Hobbs told the truth. However, the substance of these conversations was never disclosed to plaintiff or its attorneys. R. 579 239 704, 782

On the same day, Hobbs notified Fidler that he was employed to settle the interference, and suggested a conference. December 2 was agreed upon, and on that date, before plaintiff or its attorney had proposed any terms, Hobbs proposed that Larson concede priority, that plaintiff to give a release for civil damages, and that it license Precision to fulfill existing contracts and commitments for wrenches. This proposal was confirmed by Hobbs' letter to Fidler of December 6, with the suggestion that no royalty be paid on orders received prior to the settlement, but that there be a continuing royalty of three per cent upon the sales price of orders received thereafter. This proposal was conditioned upon "securing back from Thomasma" his stock in Precision, concerning which the letter stated, "You may be able to be of help to us in this connection." On the same day, before receiving Hobbs' letter, Fidler notified Hobbs that the proposal was satisfactory to plaintiff, but suggested that the royalty proposal should come from Precision and Snap-On. After receiving Hobbs' letter Fidler notified Hobbs that Automotive wanted a ten per cent royalty. R. 579 1047 873-5

Further consultations and correspondence were had by counsel for the various parties without agreement, and on December 17, Alberts, on behalf of Snap-On, notified Fidler that Larson could not settle with Automotive without Snap-On's cooperation, and that no further concessions could be made by the latter regardless of the outcome of the controversy. Thereupon, on the following day, Zimmerman served notice of taking depositions, coupled with a demand that Larson furnish his attorneys with a complete transcript of Larson's interference testimony, which had not been fully transcribed by the reporter who was employed by Alberts. Alberts then, by letter to Hobbs, attempted to substitute Hobbs as Larson's attorney in the interference proceeding, but did not R. 1061 875-7 695-6 876

withdraw his own appearance in the Patent Office. In this letter he also advised Hobbs that Snap-On would require Larson to furnish tangible security to indemnify it before Snap-On would reassign the Larson application to Larson. On December 19, Hobbs declined to accept
R. 879-80 the appointment and notified Alberts that his demand for security from Larson was unreasonable.

On that day Automotive's attorney, by letter to Alberts,
R. 1048 stated that the latter and his client Johnson, president of Snap-On, should realize that they were holding up the issuance of the Zimmerman patent without the slightest justification. That letter further stated:

> "In the second place, we do not believe that you can divest yourself of all responsibility in this matter. You are still the attorney of record. Snap-On still has legal title to the Larson application in interference. As attorney for Snap-On and Larson, you took depositions on behalf of Larson. You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on behalf of Automotive. You employed the reporter. Part of the transcript is not reported correctly or fully. The reporter delayed in transcribing part of the record. You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed. * * *"

This portion of the letter is relied upon by the defendants as implying a threat to prosecute, in order to gain an unfair advantage. It must be remembered, however, that as early as November 29, 1940, Larson and Carlsen had instructed their attorney to concede priority, and that offer was submitted to plaintiff as early as December 2. The proposal then made by Hobbs for Larson was acceptable to plaintiff, but in as much as the Larson application had been assigned to Snap-On, its consent was necessary. If given it would have settled the interference, but it was not given to plaintiff until December 24, and the delay was caused by Snap-On, and the reason therefor is quite well expressed in a letter from Alberts to his client on December 19, wherein he stated: "* * * My effort

all along has been to stiffen Larson's position so that he would not leave Snap-On * * * holding the bag—contract or no contract * * * * I would like for you to submit to your general counsel the entire matter insofar as it relates to a possible suit for conspiracy with Larson to defraud Ammco. (Plaintiff.)" R. 841-2

On that same day Alberts replied to the letter from plaintiff's attorney and characterized it as threatening in its nature, and charged plaintiff's attorney with having used duress in his cross-examination of Larson. (This was three weeks after he had heard Larson's confession.) He further stated: R. 1063

"* * * The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28, 1940. That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson. * * *

"* * * If everything Mr. Thomasma has said could or will be proved, even then Larson is entitled to be defended by an attorney whether such be myself or some other attorney. * * *

"* * * I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker. Present corroboration of the competent type with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any further phase of the case for the present."

The next day, December 20, 1940, Hobbs, Alberts and plaintiff's attorneys conferred and agreed on terms of settlement. At Albert's request, separate agreements were entered into between Snap-On, Precision and Larson: Automotive, Precision and Larson; and Automotive and Snap-On. These were reduced to writing, executed, and exchanged by the attorneys on December 24, 1940. Neither plaintiff nor its attorneys had knowledge of the contents of the Snap-On-Precision-Larson agreement until about April 14, 1943. The substance of these contracts, in so far as they are here material, is as follows: R. 431-4 588 699

1. By the Automotive and Precision-Larson contract, Larson conceded priority to Zimmerman as to R. 914

the common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was to be assigned to Automotive. Precision paid $500 to Automotive. Precision and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. Automotive gave Precision the right to complete unfilled orders on hand from Snap-On to the extent of approximately 6,000 wrenches with a royalty to be paid on the excess, released Precision and Larson and their customers from liability for infringement by reason of the manufacture and use of previously sold wrenches, and gave Precision and Larson a general release as to all civil damages.

R. 919 2. By the Automotive and Snap-On contract, Snap-On agreed to reassign the Larson application to Precision, and acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. Automotive gave to Snap-On the right to sell said approximately 6,000 wrenches then on order, released Snap-On and its customers from all liability for infringement by reason of the sale of previously sold wrenches, and gave to Snap-On a general release as to all civil damages.

R. 831 3. By the agreement between Snap-On on the one hand, and Larson and Precision on the other, Snap-On reassigned to Larson and Precision whatever title Snap-On had to the Larson application, and Precision agreed to manufacture and deliver to Snap-On the approximately 6,000 wrenches then on order. Larson assigned outright to Snap-On a joint application filed by Larson and Walraven and not involved here. Snap-On advanced to Precision the $500, which was paid to Automotive. Snap-On assented to the Automotive and Precision-Larson agreement and agreed to the cancellation of an agreement between it and Precision dated September 28, 1938, by virtue of which Snap-On had obtained title to the Larson application.

The $500 which Snap-On turned over to Precision was paid out of the defense fund which Snap-On was withholding under their agreement of September 28, 1938. It was paid by Precision to Automotive, who in turn paid it to Thomasma for his Precision stock, which stock was then

R. 704-5
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delivered to Precision by Automotive, who retained no part of the $500. This was done pursuant to an understanding of all the parties, and at the request of Hobbs. We gather from the record that this was due to the ill feeling between Thomasma and the defendants and the further fact that the former had tried to sell his stock to plaintiff's president on November 3, 1940. However that may be, plaintiff agreed to use its good offices to that end and was successful. R. 1048

In conformity with these agreements, the Larson application was duly assigned to Automotive on December 20, 1940. Later the latter added further claims which were allowed, and the Larson patent was issued to Automotive.

Both Snap-On and Precision operated under the interference settlement agreements as to the orders therein referred to. As soon as those orders were filled, Precision began to furnish, and Snap-On began to sell, a modified wrench for which Alberts had prepared a patent application for Larson on December 26, 1940, on which day Larson executed it at Snap-On's place of business. On January 16, 1941, Snap-On entered into a new agreement with Precision under which the latter was to manufacture the new wrench for Snap-On. That is the wrench which is here charged with infringement. Snap-On has continued to deal with Larson and Precision, and Alberts has continued to represent Larson in connection with other patent applications. R. 151; 488 to 491; 846; 380; 104-5

On March 10, 1943, all issues had been joined with respect to the complaint, petition for declaratory judgment and the counterclaims thereunder. On March 27, 1943, at a pre-trial examination of Larson in open court, as requested by plaintiff, Larson admitted his perjury and thereupon Automotive's counsel called the court's attention to that fact. That admission, aside from the filing of the joint amended, unverified answer of the defendants on February 8, 1943, and Snap-On's third amended petition for a declaratory judgment on March 1, 1943, verified by Alberts, was the only confirmatory evidence of Thomasma's story of which plaintiff had knowledge. When on February 8, the defendants jointly filed their amended answer, it was notice to the world that Larson had committed perjury. Likewise, three weeks later, Snap-On gave the same notice when Alberts filed its amended verified petition. Prior to those dates, plaintiff and its attorneys, of course, were mor- R. 91; 93-4; 118

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ally certain that Thomasma's story was true, but they did not think that the uncorroborated evidence of their traitorous former employee would be accepted as against Larson's nine witnesses. This was Albert's opinion, as expressed in his letter to plaintiff's attorneys on December 19, and also the opinion of those disinterested persons whom plaintiff's counsel consulted. Under these circumstances we think it is clear that no duty devolved upon plaintiff to report its information to either the District Attorney or the Patent Office. Certainly there was no active concealment, or misrepresentation, and after the court was informed, no duty rested upon plaintiff or its attorneys except to testify truthfully when called upon by the authorities.

It is elemental that we are bound by the material facts as found by the District Court, if they are supported by substantial evidence, otherwise we are not bound by them. The facts found by the court, with but very few exceptions, are exact copies of those requested by the defendants, and many of them are not findings of facts. The court did not find that, on or before the contracts and assignment were executed, plaintiff or its attorneys knew that Larson's proofs were perjured. The defendants' requested finding No. 11 was to that effect, but the court's finding No. 11 substituted the word "insufficient" for the word "perjured."

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Larson testified at his pre-trial examination that Hobbs, his own attorney, told Carlsen and himself that Fidler had told Hobbs before December 20, 1940, that if the contract was not signed Fidler would "turn loose the dogs and I would go to jail." Hobbs emphatically denied this statement and denied that he had made any threat of his own or any one else to Larson, Carlsen, Precision, Alberts or Snap-On. Moreover, Fidler and Lindsey testified that neither of them had ever made any threats to Hobbs or to any one else. Larson said Hobbs was the only one who gave him any information concerning threats and charges of perjury, and Carlsen said that all of his dealings with respect to the settlement were between himself, Larson and Hobbs, and Alberts was not in the picture. There are conflicts in the evidence with respect to this phase of the case, and they cannot be reconciled so as to believe all the testimony of these three witnesses. However, the District Court informs us that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith.

Johnson, Snap-On's president, testified as to threats of prosecution made by plaintiff's attorneys. However, such threats were denied by those attorneys, and Johnson testified that neither he nor his company was coerced into signing the agreement either directly or indirectly. Moreover, Larson testified that the agreement contained somewhere near a reasonable settlement, and his attorney Hobbs said that it was a fair one, and so advised him when he signed it. R. 184-5 770 201 236 601

Alberts, attorney for the defendants, testified at great length with respect to practically all phases of the case. Some of his statements are quite inconsistent with others made by him. Others were categorically denied by those to whom he attributed their authorship, including Hobbs. He laid great stress upon what he interpreted as threats to prosecute Larson, which were contained in letters from plaintiff's attorney. Certainly these were not direct threats, and his interpretation of them is based purely upon inferences which we think were not warranted, and were mere products of his imagination. R. 382 to 570 702, 781 601-2 446 to 454

The District Court did not believe the testimony of Larson, Carlsen or Alberts, or any other witness, where it contradicted Hobbs' testimony, and the latter did not disagree with the testimony of plaintiff's attorneys which related to the same facts. Some, if not all, of these first-named witnesses testified to an agreement among all the attorneys that all the evidence, incriminating or otherwise, would be destroyed. This testimony was denied emphatically by Hobbs and plaintiff's attorneys, and their denial is supported by the fact that no part of the evidence adduced was ever destroyed, and all of it is set forth in the printed record now before us, or is in the hands of the clerk of this court. Hobbs had notified plaintiff's attorneys that he desired all evidence preserved. A portion of Larson's proofs had not been transcribed and never has been, and some parts had been transcribed incorrectly. When Fidler notified Alberts of his intention to take plaintiff's proofs and of his desire to have full copies of Larson's proofs, Alberts notified his reporter of that fact, and requested him to complete his transcription and notified Fidler of that fact. They were not completed when the settlement was executed, whereupon, in compliance with Hobbs' request to preserve all evidence, Fidler notified the reporter of the settlement and requested him to deliver his transcriptions and his un- R. 147, 235 483-4 595 702 781. 695-6 786 875 1103 845.

transcribed notes to Alberts, who had employed him for the defendants. The defendants now stress this circumstance as proof of plaintiff's effort to conceal and suppress testimony. There is no merit in this contention.

R. 883-4 In Fidler's letter to Hobbs on December 28, he said, "As to other clean-up matters that we discussed last Tuesday, I will be glad to go into the same with you whenever you are ready." Defendants urge that the words "clean-up matters" indicate a purpose to destroy the evidence. However, 590 both Hobbs and Fidler testified that the words referred only to three matters which they had previously discussed, which were (1) a new and corrected assignment of the Larson application from Snap-On to Precision and Larson; (2) a correction in the Automotive-Precision agreement, and (3) procuring from Precision a list of the wrench orders then 885-7 on hand from Snap-On. This testimony is supported not only by Hobbs' letters to Fidler on December 30, and January 4, but by the District Court's memorandum of July 12.

We are convinced that the contradicted testimony of Larson, Carlsen, Alberts and Johnson has no probative value and cannot be considered as substantial evidence in the light of this record.

The defendants further contend that the Larson application should have been a joint application by Larson and Thomasma. This record does not warrant such conclusion, and we think our conclusion in this respect is strongly supported by the facts that the application was filed on October 1, 1938, by Alberts, the attorney for Larson and Snap-On, and it was assigned to Snap-On. The defendants and Alberts were fully informed as to the contents of the Thomasma affidavit on November 28, 1940, which fully stated his connection with the Larson disclosure. The defendants continued to operate under the pending application, and raised no question as to Thomasma's joint authorship of Larson's disclosure until March 1, 1943, when Snap-On, by Alberts, filed its amended petition for a declaratory decree. This was more than three years after they had full knowledge of the contents of the Thomasma affidavit, and more than two years after Larson had secretly confessed his perjury to them.

The defendants further contend that the claims added to the Larson application after its assignment to plaintiff, which claims were subsequently allowed by the examiner,

were not within the purview of the parties' contract. The examiner is not bound by contractual limitations of the parties as to the additions or rejections of claims. Here, however, the contract is silent on the subject, and we know of no reason why proper additional claims may not be allowed to the assignee under the name of the inventor as well as to the inventor before assignment. Whether the examiner erred in allowing one or more of the additional claims, or whether any of the claims are valid are questions which are not before us on this appeal. The patent is presumed to be valid, and we hold that additional claims were not precluded by the contract of the parties. Nor did their allowance render the contract between plaintiff and the defendants an unconscionable one.

We are convinced that the findings of fact, with respect to plaintiff, are not supported by substantial evidence, and that the conclusions of law are not supported by the findings. The court's ruling in dismissing plaintiff's complaint and its supplemental complaint in the infringement suit, and its counterclaims in defendants' suit for a declaratory judgment is reversed. As to all other matters the decree is affirmed. The cause is ordered remanded for further proceedings not inconsistent with this opinion.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944.

NO. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON and SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY CO.,

Respondent.

BRIEF FOR RESPONDENT.

FRANK PARKER DAVIS,
Attorney for Respondent.

ALBERT J. SMITH,
Of Counsel for Respondent.

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Petitioners,

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AUTOMOTIVE MAINTENANCE MACHINERY CO.,

Respondent.

BRIEF FOR RESPONDENT.

FOREWORD.

We refrain from including in this present brief an extended statement of the facts of the case, and we shall but briefly comment upon petitioners' "Concise Statement of the Case." For the moment we disregard its unwarranted conclusions, and its omissions of material facts, except to note the significant omission to mention the important fact that on two separate occasions respondent's attorney sought legal advice about going to the authorities, and was *cautioned against any such action.*

We prefer to stand upon the statement in the Court of Appeals opinion which petitioners' brief calls "its own version of the facts."* *No errors of facts in that "version"*

*That opinion, with supporting record page references, is printed in the Appendix to our Brief Opposing Petition for Writ of Certiorari.

are anywhere pointed out in petitioners' brief. Moreover, there is no conflict between the Court of Appeals' fact findings and those made by the District Court. The Court of Appeals simply drew a different conclusion from that drawn by the District Court, holding that the latter's conclusion was not supported by the found facts.

Commenting briefly upon petitioners' "Specification of Assigned Errors to Be Urged" (P. B. p. 35) under numerals corresponding thereto:

1. There is no conflict "direct" or otherwise between the Court of Appeals' ruling in the case at bar and the decisions of this Court in the cited cases, the facts and circumstances whereof were wholly different from those of the instant case as we shall later point out.

2. The holding by the Court of Appeals was not baldly as petitioners' put it, but was as follows (R. 1220-1):

> "On March 27, 1943, at a pre-trial examination of Larson in open court, as requested by plaintiff, Larson admitted his perjury and thereupon Automotive's counsel called the court's attention to that fact. That admission, aside from the filing of the joint amended unverified answer of the defendants on February 8, 1943, and Snap-On's third amended petition for a declaratory judgment on March 1, 1943, verified by Alberts, was the only confirmatory evidence of Thomasma's story of which plaintiff had knowledge. * * * Prior to those dates plaintiff and its attorneys, of course, were morally certain that Thomasma's story was true, but they did not think that the uncorroborated evidence of their traitorous former employee would be accepted as against Larson's nine witnesses. This was Albert's opinion, as expressed in his letter to plaintiff's attorneys on December 19, and also the opinion of those disinterested persons whom plaintiff's counsel consulted. *Under these circumstances* we think it is clear that no duty devolved upon plaintiff to re-

port its information to either the District Attorney or the Patent Office. Certainly there was no active concealment, or misrepresentation, and after the court was informed, no duty rested upon plaintiff or its attorneys except to testify truthfully when called upon by the authorities."*

3. There is no conflict "direct" or otherwise between the Court of Appeals' use of the District Court's Memorandum, and the cited cases, since that Memorandum was not employed with any effect whatever to detract from or modify the District Court's *fact* findings with all of which the Court of Appeals agreed as we demonstrate by parallel column quotations at pp. 12 to 14, *infra*. It was only with respect to the matters of alleged threats and coercion and suppression of evidence that the Court of Appeals attached to Hobbs' testimony the full weight and credibility which the District Court attached to it and the District Court made no findings with respect to those matters and, in fact, made no finding as to credibility of any other witness on any issue.

4. It necessarily follows that the Court of Appeals has not violated Rule 52(a) nor construed it conflictingly with "numerous [or any] decisions of the Circuit Court[s] of Appeals."

"UNCLEAN HANDS."

Passing now to the question of respondent's "unclean hands" as *concluded* by the District Court, we cannot know whether certiorari was granted for review of the contrary conclusion by the Court of Appeals, so it would appear to be incumbent upon us to deal with that subject.

We first quote a passage (R. 1214-5) from the opinion of the Court of Appeals, having reference to respondent's

* Emphasis ours throughout unless otherwise indicated.

"remaining silent after securing the Thomasma affidavit" which occurred November 15, 1940:

> "On *November 18, 1940,* Automotive's attorney, Fidler, submitted to *an outside attorney of good standing and large experience the question as to whether he should submit the matter to either the Patent Office or the District Attorney.* He was then and there advised not to submit it at that time to either, as the Patent Office would not consider it until plaintiff's proofs were in, and the District Attorney would not touch it so long as the priority proceeding was pending. He further advised in effect that on account of *plaintiff's paucity of proof,* and the former disloyalty of its only witness, it could not hope to discredit the nine witnesses whose testimony had supported Larson's priority, and that a suit for damages by the defendants might ensue."

The first passage from the opinion of the Court of Appeals, quoted on page 2, 3, supra, bears directly upon respondent's continued silence up to Larson's admitting his perjury on pre-trial examination.

In addition to the "outside attorney" referred to in the second of the above quotations, Fidler had, on *December 7, 1940,* consulted attorney David O. Dunbar of Chicago, another of the "distinterested persons" referred to in the first quotation. We quote from his testimony on direct examination (R. 825-6):

> "Q. What was your conversation with Mr. Fidler?
>
> "A. Mr. Fidler told me at great length what the situation was and finally I asked him, 'Have you told me everything that has a bearing on it, so far as you know?' And he said he had, and I said, 'My opinion is we haven't any legal evidence upon which to base a conspiracy suit; we will get ourselves in lots of trouble, and we certainly do not have legal evidence to start a criminal prosecution.' He asked me why, and I told him I didn't think that any prosecutor would

open up a Grand Jury investigation, because there wasn't any sufficient public interest, and he also would be suspicious that we were trying to get him to use the criminal processes to develop evidence for us for our civil suit, and he would naturally go out and ask us to swear out an information, and we would have to base our suit, a criminal prosecution, on the evidence that this fellow Tosema or Thomasma and his relatives had told, and that he had betrayed his employer and was ~~not~~ now double crossing his associates, and I wouldn't put any credence in anything that he said, and I wouldn't base any prosecution on his testimony, and I certainly didn't want to get the company in a position where it might be sued for false arrest or defamation of character or malicious prosecution or any other charge, and the best thing for him to do in my mind was not to try it, and I was going to tell Mr. Wacker that Monday morning. That is the last I ever talked to Mr. Fidler about it."

On cross-examination he testified as follows (R. 827):

"A. I hadn't the slightest doubt in my mind but what this Tosema or Thomasma was telling the truth, but *to prove that legally would be a different thing*, and you would be checking on the truth of what he said, but *it wouldn't be evidence to my mind sufficient to prosecute a third party.*

"Q. That is, you couldn't get a prosecutor to step in because there wouldn't be sufficient public interest—

"A. He would ask us to swear out an information, a warrant, for these people, and we would have an arrest and they would be discharged because we couldn't support our information or warrant, and then we would be subject to suit for false arrest or defamation of character or malicious prosecution or anything else.

"Q. I understood you to say there wasn't any question in your own mind but what Thomasma's story was correct.

"A. I assumed that he was telling the truth, but *there wasn't any legal evidence to support it outside of his own statement.*"

It should be noted that attorney Dunbar was consulted *after* respondent and its attorneys knew of the willingness on the part of Larson to concede priority of invention to respondent's inventor Zimmerman, subject to certain conditions. At the December 2nd, 1940 conference between Hobbs, Haight and Fidler, Hobbs proposed to Fidler that Larson concede priority, and that respondent give a release for civil damages and license petitioners to fulfill existing commitments for wrenches. And on December 6th Hobbs wrote Fidler and Fidler wrote Hobbs about the proposition and a continuing royalty on orders received subsequent to the settlement (D. E. 63, R. 1045; P. E. 29; R. 873-4; R. 581-2, 607, 631-2, 775-77).

We next quote from the letter written by Alberts, the *petitioners'* attorney, to Lindsey, *respondent's* attorney, *just prior to the closing of the contracts*,—this being the letter referred to in the first above quotation from the opinion of the Court of Appeals where it reads, "This was Alberts' opinion, as expressed in his letter to plaintiff's attorneys on December 19":

"The *only* evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28, 1940. That evidence was given by an individual *who has already admitted that he has committed wrongdoings against your client*, himself, and Larson." R. 1064.)

* * * * * *

"I *certainly* do not regard Mr. Thomasma as an individual of such repute that his *uncorroborated words are deserving of being accepted hook, line and sinker.* Present corroboration of the competent type with sufficient competency to outweigh Larson and his corrob-

orators, and then your client is entitled to an award of priority." (R. 1066.)

Prior to writing this letter, Alberts had had the confession of Larson but withheld that information as no doubt the attorney-client relationship required, although that did not justify the deception or untruthfulness in the statement of the letter reading: "The *only* evidence leading to any wrongdoing *thus far* was given to Mr. Johnson and myself at your office on November 28, 1940." (Johnson was present when Larson confessed his perjury.) Charitably accepting Alberts' strained interpretation of what is above quoted from his letter, viz., as referring only to the evidence that was given to him and Johnson by Thomasma, nevertheless the letter was certainly most confirmatory of the opinions respondent had from the "disinterested" persons to whom the Court of Appeals refers as having advised respondent against going to the authorities on the basis of Thomasma's affidavit.

Certainly the "circumstances," including Dunbar's advice and Alberts' opinion, referred to by the Court of Appeals, were *not* "merely events that occurred long before the date of settlement" as asserted by petitioners in their brief on page 53.

It is also noteworthy that respondent's investigations respecting the suspected perjury were *continued for two weeks after the contracts were closed* and at an expense of $565.00 but without unearthing any conclusive evidence (R. 757-9).

At page 48 of their brief petitioners preach "several things Plaintiff could have and should have done," but are careful to omit the one very prudent thing that could have been done and *was done,* namely, taking counsel with competent legal advisers as to whether to go to the au-

thorities. Petitioners' attorneys apparently maintain that the advice against doing so, confirmed by one of their own members, Alberts, should have been disregarded!

Respondent's Alleged Knowledge Re Perjury.

We proceed now to answer petitioners' contention that respondent *did* have *positive* knowledge of the perjury much earlier than as conveyed by the pleadings and the admission by Larson on pretrial examination,—albeit this contention challenges the District Court's findings of fact, quite inconsistently with their contention that the Court of Appeals erred in rejecting, as they maintain, these very findings.

Petitioners did request findings of fact such as they now maintain would have been supported by the evidence, but the District Court did not adopt those findings. Thus petitioners' proposed finding No. 7 (R. 1119) read that Thomasma's affidavit "disclosed such intimate knowledge thereof [Larson's early work] as to leave *no* doubt of the author's knowledge of the facts." The District Court (R. 1123) substituted the word "*little*" for the word "no." And petitioners' proposed finding No. 11 read (R. 1120):

> "11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson's Interference proofs were *perjured.*"

The District Court's finding No. 11 reads (R. 1124):

> "11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his interference proofs were *insufficient.*"

The sum and substance of petitioners' present contention is that positive knowledge by respondent of Lar-

son's perjury was conveyed to it by respondent's attorneys being told by petitioners' attorneys that Zimmerman was the prior inventor and by reason of Larson's willingness to concede priority of invention to Zimmerman.

No such finding was proposed by petitioners nor made by the District Court. However, we submit that it is without force in support of petitioners' dissatisfaction with the District Court's findings which fell short of finding that respondent had any such knowledge.

Neither petitioners' recognition of Zimmerman as prior inventor, nor their readiness to have Larson execute a formal concession of priority, could constitute a declaration of perjury. Subsequent events, and particularly the eventual admission of perjury, may well be taken as showing that this was the reason for willingness to concede priority to Zimmerman, but that could not operate retroactively to fasten knowledge of that perjury upon respondent. Neither would the fact that respondent suspected, and had good reason to suspect, that the concession was offered because of guilty knowledge have that effect. Hobbs was the one who originally proposed it and *he* had not been informed of the perjury confession, nor had he seen the Thomasma affidavit. Other reasons could have existed for recognizing Zimmerman as the one entitled to the patent, e.g., estoppel against Larson by reason of his delay in applying for patent and his being stimulated to do so upon learning of Zimmerman's wrench.

In fact, that matter certainly had been present in the minds of respondent's attorneys, and indeed, in the mind of Alberts, himself. Thus Larson in his preliminary statement alleged dates in the year 1934 for his first disclosure, first drawing and first reduction to practice. These dates are given in Fidler's letter to Wacker of August 5, 1940 (D. E. 87; R. 1084, 1085). Fidler in that letter says:

"You will also note that it was more than *four years* from the time he alleges reduction to practice that Larson filed his application.

. . . . . .

"This wide gap in dates presents still another question,—*namely, whether or not the thing alleged to have been a reduction to practice was nothing more than an abandoned experiment.*"

Fidler again explained this at the trial (R. 813).

And that Alberts himself recognized that there was a serious question of abandonment is established by the fact that during the taking of Larson's deposition in the interference, he asked Larson a series of questions in an obvious endeavor to prove that Larson was poverty stricken and therefore unable to file an application promptly. (Transcript of Interference Testimony, Physical Exh. 63, QQ. 620 to 645, pp. 93 to 96, QQ. 662 to 672, pp. 99, 100).

However, we do not stake the case upon any such proposition but recognize that the offer to concede priority might well have tended to confirm respondent's belief that the Larson testimony was perjured. It was not tantamount to *knowledge* of any confession, and respondent remained in ignorance as to such a thing having actually occurred. The question is then whether the offer to concede priority was enough to lay respondent under an immediate duty to file an information against Larson and his supporting witnesses. *The answer is that lawyer Dunbar was consulted and advised against it.*

Had respondent been seasonably informed of the confession, it is eminently fair to assume that respondent would have taken the matter to the Authorities, considering that respondents' attorney had already twice pro-

ceeded in that direction to the point of taking counsel as to sufficiency of the evidence to warrant action.

Try as they so elaborately do in page after page of their brief, to find in the record direct conclusive proof of certain knowledge possessed by respondent's officers and attorneys of the perjury committed by Larson, the stubborn fact remains that the District Court refused to so find. What more need there be to justify the Court of Appeals in ruling that the District Court's conclusions against respondent were not supported by its findings of fact?

THE COURT OF APPEALS DID NOT OVERTURN THE DISTRICT COURT'S FINDINGS OF FACT.

The only respect in which the Court of Appeals really went contrary to the District Court was in ruling that there was no substantial evidence to support the fact *conclusion* (No. 16) reached by the District Court, and that its actual findings of fact did not support its conclusions of law.

The granting of certiorari could scarcely have been for reasons that contradict each other, and upon surmise that it was not done for purposes of reviewing actual fact findings, we shall pursue the procedural question posed by petitioners as to the action of the Court of Appeals with respect to those fact findings of the District Court, i.e., whether any of them were in truth disregarded or rejected in contravention of Rule 52(a).

By way of showing that petitioners' representations as to this are ungrounded, we first quote what petitioners say are the "salient findings",—Nos. 6, 7, 10, 11 and 13,—and in parallel column the statements of the Court of Appeals on the same topics:

"6. Before Larson's testimony in the interference was concluded, Thomasma sought out plaintiff's president and revealed that he had brought the invention which was the subject matter of the interference to Larson."

"On November 3, 1940, the day before Larson closed his proofs, Thomasma and his attorney attempted to sell Thomasma's Precision stock to Wacker, president of Automotive. He then asserted that he had given Larson the idea of developing a wrench from the Automotive wrench, but he disclosed no specific facts with respect thereto. Wacker refused the offer (R. 1214).

"7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt of the author's knowledge of the facts. In that statement, Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a high school boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff as proof of his claim."

"On the evening of November 7, 1940, Thomasma voluntarily went to the home of Fidler, the attorney for Automotive, and also returned there the following evening. During those times he voluntarily made a statement with respect to his and Larson's work on the wrench. It was taken down in shorthand, transcribed, and sworn to by him on November 15, 1940, and is quite voluminous. He stated therein that Larson came to his home in November 1937, where they discussed the possibility of making a tension wrench, and at that time he showed Larson a socket, a piece of drill rod and a handle; that Larson then made some patterns, and that several wrenches were made by Larson before any drawings of the wrench were made. He further stated that he made a drawing of the device in June 1938, and that it was the same drawing offered by Larson in the Interference as the work of a high school boy on May 20, 1936." (R. 1214).

"10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman."

"There are conflicts in the evidence with respect to this phase of the case, and they cannot be reconciled so as to believe all the testimony of these three witnesses" (R. 1221).

* * * * *

"Larson was required to produce his evidence first. Nine witnesses, including himself, were examined, and considerable documentary evidence and physical exhibits were received in evidence on his behalf, the hearing of which began October 24 and ended November 4, 1940. It substantiated Larson's early dates, and cross-examination failed to discredit it" (R. 1214).

"11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his Interference proofs were insufficient."

"December 2 was agreed upon, and on that date, before plaintiff or its attorney had proposed any terms, Hobbs proposed that Larson concede priority— . . . This proposal was confirmed by Hobbs' letter to Fidler of December 6 . . ." (R. 1216).

* * * * *

"It must be remembered, however, that as early as November 29, 1940, Larson and Carlsen had instructed their attorney to concede priority, and that offer was submitted to plaintiff as early as December 2. The proposal then made by Hobbs for Larson was acceptable to plaintiff, but in as much as the Larson application had been assigned to Snap-On, its consent was necessary." (R. 1217).

"13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated."

"On March 27, 1943, at a pretrial examination of Larson in open court, as requested by plaintiff, Larson admitted his perjury and thereupon Automotive's counsel called the court's attention to that fact. That admission, aside from the filing of the joint amended, unverified answer of the defendants on February 8, 1943, and Snap-On's third amended petition for a declaratory judgment on March 1, 1943, verified by Alberts, was the only confirmatory evidence of Thomasma's story of which plaintiff had knowledge. • • • Prior to those dates, plaintiff and its attorneys, of course, were morally certain that Thomasma's story was true, but they did not think that the uncorroborated evidence of their traitorous former employee would be accepted as against Larson's nine witnesses. This was Albert's opinion, as expressed in his letter to plaintiff's attorneys on December 19, and also the opinion of those disinterested persons whom plaintiff's counsel consulted." (R. 1220-1.)

Not only will exhaustive scrutiny of the opinion of the Court of Appeals reveal *no* rejection of *any* of these "salient" findings, nor of any other of the District Court's real findings of fact, but it will be found that there are no inconsistencies between any of these findings and the statement of facts as put in the opinion. That statement simply reviews the facts of the case more comprehensively than they are put in the District Court's findings, and analyzes the evidence bearing upon the facts.

The District Court's fact *conclusion* (No. 16), with which the Court of Appeals disagreed, had reference to "re-

spondent's silence with regard to the perjury of Larson and others." There was no "irreconcilable conflict" as to *that*. The "irreconcilable conflict" could only relate to threats, promise not to prosecute, and suppression of evidence. In fact, petitioners in their brief only assert that the "evidence is irreconcilable" or "in irreconcilable conflict" with respect to "destruction of evidence (P. B. 33) and "threats and promises" (P. B. 49). No findings were made by the District Court as to those matters. Indeed, none had been proposed by petitioners.

Actually the burden of petitioners' contention with respect to this matter is that the Court of Appeals "scrapped" or "overthrew" the findings of fact of the District Court solely in view of the District Court's Memorandum absolving Hobbs.* Petitioners' counsel are not even consistent. Thus on page 56 of petitioners' brief they assert that "no findings as to any witness' credibility were tendered or made" to or by the District Court, and then on page 64 of their brief they say that "What the Circuit Court of Appeals did was thus merely to weigh the credibility of witnesses and to reject the testimony of many witnesses accepted by the District Court * * *".

We emphasize that what the Court of Appeals exactly did in its opinion was just this: It first (to the middle of page 1202 of the record) stated the issues, as joined by the pleadings, and referred to the trial and the District Court's Memorandum, Findings of Fact and Conclusions of Law and the Judgment, all without comment. It then devoted and confined the next nine pages of its opinion (ending with the middle of page 1221) to a careful and exact exposition of the facts as to the matters dealt with

*Incidentally, petitioners' counsel can hardly be serious in dubbing as a "random observation" the District Court's statement "that the witness Hobbs did not testify falsely," particularly as the Memorandum was confined to that matter and the Court made the statement after it had "reexamined the record," as stated in the Memorandum itself.

in the District Court's fact findings and as to the only conclusion upon which the judgment was based, i.e., respondent's unclean hands by reason of its silence. Throughout these nine pages no reference of any kind is made to the District Court's Memorandum finding that Hobbs had not testified falsely. In the next two pages of its opinion the Court of Appeals meticulously analyzed the facts as to the criminal charges of compounding a felony and coercion pleaded against respondent and its attorneys. *It is only in connection with those charges that the Court of Appeals gave weight to the District Court's specific declaration, upon reexamination of the record, that "Hobbs did not testify falsely."*

The Court of Appeals certainly did not "*reject the testimony of many witnesses accepted by the District Court.*"

On the contrary the testimony rejected by the Court of Appeals was the testimony of petitioners' witnesses contradicting Hobbs' testimony, and the District Court in accepting his testimony necessarily rejected the testimony of petitioners' witnesses. Hence the Court of Appeals was *in accord with the District Court* when stating

> "We are convinced that the contradicted testimony of Larson, Carlsen, Alberts and Johnson has no probative value and cannot be considered as substantial evidence in the light of this record." (R. 1223.)

Naturally the Court of Appeals took into account that Carlsen and Larson were confessed perjurers. The Court also referred (R. 1222) to Alberts' testimony as being "quite inconsistent" and based in part on "his imagination," and noted that Johnson testified neither he nor Snap-On were "coerced * * * directly or indirectly."

No single fact found by the District Court, nor any one of the formal "Findings of Fact" was overruled or dis-

credited by the Circuit Court of Appeals in referring to or in accepting the District Court's memorandum on the credibility of the witness Hobbs. The comments of the Court of Appeals in respect to the testimony and credibility of Hobbs were made as to contentions and findings urged by petitioners, but rejected both by the District Court and Circuit Court of Appeals.

From the foregoing it is apparent that this case presents no such questions as those posed in paragraphs 3 and 4 on page 35 of the petitioners' brief and pursued in Sections III and IV of that brief. The Court of Appeals did not refer to the District Court's memorandum "for the purpose of eking out, controlling or modifying the scope of the findings"— quoting from *Stone* v. *United States*, 164 U. S. 380, 383, so heavily relied upon by petitioners. And the Court of Appeals did not violate the provisions of Rule 52a of the Federal Rules of Civil Procedure in giving weight to the memorandum in connection with the criminal charges—upon which the District Court admittedly made no findings. In fact, the Court of Appeals fully complied with the express provision of that Rule that "due regard shall be given to the opinion of the trial court to judge the credibility of the witnesses," the District Court having passed only on the credibility of Hobbs and no other witness, as admitted by petitioners themselves.

The authorities cited by petitioners are not in point, except the case of *Webb* v. *Frisch*, 111 Fed. (2d) 887, C. C. A. 7th, and that case is only in point because it supports exactly what the Circuit Court of Appeals did. In the *Webb* case, the District Court made findings as to a prior use and in a separate "memorandum" made express findings as to the truthfulness of two witnesses, and the Court of Appeals said with respect to this memorandum:

"We must attach to the testimony of the witnesses the full weight and quality of credibility which the trial court gave it."

In the instant case the Court of Appeals properly overthrew the fact *conclusion* with respect to respondent's unclean hands because it was "not supported by substantial evidence" and was therefore "clearly erroneous" under the Rule. And correspondingly the Court of Appeals overthrew conclusions of law because they were "not supported" by the findings of fact. Therefore the Court of Appeals' decision is wholly consistent and in accordance with the provisions of Rule 52a and many cases thereunder.

"The findings of fact of the court below to the extent that they are unsupported by substantial evidence, or are clearly against the weight of the evidence, or were induced by an erroneous view of the law, are not binding upon this Court." *Aetna Life Ins. Co.* v. *Kepler*, 116 Fed. (2d) 1, 5 (C. C. A. 8th).

"The sufficiency of the evidence to sustain a trial court's conclusion or finding of an ultimate fact remains appropriate matter for an appellate court's consideration." *Kuhn* v. *Princess Lida*, 119 F. (2d) 704, 706 (C. C. A. 3rd).

"Although we agree that the findings and conclusions of the Master adopted by the District Court should not be disturbed unless there is most cogent evidence of mistake and miscarriage of justice or error in applying the law, yet where the ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact, as it is in this case, *it is subject to judicial review, and our duty is not to place a perfunctory stamp of approval upon the work of the District Court, but rather to provide a real review.*" *Becker* v. *Loew's, Inc.*, 133 F. 2nd 889, 894 (C. C. A. 7th).

PETITIONERS' CONTENTIONS THAT THE CONTRACTS ARE UNFAIR AND ILLEGAL AND THAT RESPONDENT COERCED PETITIONERS INTO ENTERING INTO THEM AND SUPPRESSED EVIDENCE ARE WITHOUT MERIT.

Throughout petitioners' brief (for example, in the chapter beginning on page 46) are direct implications and representations that respondent was unwilling to accept only a concession of priority but was "playing for bigger stakes", and that the contracts were unconscionable and were procured by implied threats.

Petitioners asked for no findings on these matters. The District Court made none.

The Court of Appeals carefully considered these contentions and in connection with them stated, in part, as follows:

> "December 2 was agreed upon, and on that date, before plaintiff or its attorney had proposed any terms, Hobbs proposed that Larson concede priority, that plaintiff give a release for civil damages, and that it license Precision to fulfill existing contracts and commitments for wrenches." (R. 1216).
>
> * * * *
>
> "It must be remembered, however, that as early as November 29, 1940, Larson and Carlsen had instructed their attorney to concede priority, and that offer was submitted to plaintiff as early as December 2. The proposal then made by Hobbs for Larson was acceptable to plaintiff, but in as much as the Larson application had been assigned to Snap-On, its consent was necessary. If given it would have settled the interference, but it was not given to plaintiff until December 24, and the delay was caused by Snap-On, and the reason therefor is quite well expressed in a letter from Alberts to his client on December 19, wherein he stated, '* * * My effort all along has been to stiffen Larson's position so that he would not leave Snap-On * * *

holding the bag — contract or no contract . . . . I would like for you to submit to your general counsel the entire matter insofar as it relates to a possible suit for conspiracy with Larson to defraud Ammco (Plaintiff)'" (R. 1217-8).

. . . . .

"Larson testified at his pre-trial examination that Hobbs, his own attorney, told Carlsen and himself that Fidler had told Hobbs before December 20, 1940, that if the contract was not signed Fidler would 'turn loose the dogs and I would go to jail.' Hobbs emphatically denied this statement and denied that he had made any threat of his own or any one else to Larson, Carlsen, Precision, Alberts or Snap-On. Moreover, Fidler and Lindsey testified that neither of them had ever made any threats to Hobbs or to any one else. Larson said Hobbs was the only one who gave him any information concerning threats and charges of perjury, and Carlsen said that all of his dealings with respect to the settlement were between himself, Larson and Hobbs, and Alberts was not in the picture. There are conflicts in the evidence with respect to this phase of the case, and they cannot be reconciled so as to believe all the testimony of these three witnesses. However, the District Court informs us that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith.

"Johnson, Snap-On's president, testified as to threats of prosecution made by plaintiff's attorneys. However, such threats were denied by those attorneys, and Johnson testified that neither he nor his company was coerced into signing the agreement either directly or indirectly. Moreover Larson testified that the agreement contained somewhere near a reasonable settlement, and his attorney Hobbs said that it was a fair one, and so advised him when he signed it.

"Alberts, attorney for the defendants, testified at great length with respect to practically all phases of the case. Some of his statements are quite inconsistent

with others made by him. Others were categorically denied by those to whom he attributed their authorship, including Hobbs. He laid great stress upon what he interpreted as threats to prosecute Larson, which were contained in letters from plaintiff's attorney. Certainly these were not direct threats, and his interpretation of them is based purely upon inferences which we think were not warranted, and were mere products of his imagination." (R. 1221-2).

The District Court having made no findings on these matters and the Court of Appeals having disposed of them as above quoted, there is obviously no conflict between the findings of fact of the District Court and the decision of the Court of Appeals with respect to them. Hence petitioners' counsel could not seriously contend with respect to them that the Court of Appeals either referred to the District Court's memorandum to modify the scope of the findings or violated the Federal Rule of Civil Procedure (52a). And this Court has repeatedly and consistently held that it does not grant a petition for writ of certiorari for the purpose of reviewing the evidence and readjudicating the case on the facts. *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508.

Petitioners having raised these matters in their brief, though not assigning error in reference thereto, we feel constrained to briefly review the actual facts so that this Court will have before it "all that is material to the consideration of the questions presented"—quoting from Rule 27a of this Court.

Petitioners, Not Respondent, Broached Settlement. Simply a Concession of Priority Would Have Satisfied Respondent.

It was not respondent's attorney, nor any one connected with respondent, but it was Hobbs, at the instigation of

Alberts, Snap-On's attorney, who made the first suggestion of settlement and who made a definite proposal, which demanded concessions from respondent in return for a concession of priority (R. 581, 776; P. E. 29, R. 873-5; D. E. 65, R. 1047).

Lindsey made it clear to Hobbs that respondent did not want to grant petitioners any license but that all respondent desired, if entitled to it, was a concession of priority (R. 689, 731).* But Hobbs was not willing to have Larson simply concede priority and Alberts and Snap-On did everything they could to prevent Larson from doing just that. Hobbs testified (R. 581):

> "Q. At this conference did you offer or suggest that you would recommend to Larson that he offer and submit to us a simple concession of priority without any conditions attached?
>
> "A. No. That I was afraid to do and would still be afraid to do because of the fact that if a simple concession of priority were filed, I could foresee that the next day, or as soon as you could, you might issue the Zimmerman patent and then you would sue us for patent infringement and then the customers of Precision would be liable to charges of infringement for their use, they would be back at Snap-On and Snap-On would be back at Precision. *I wasn't willing to concede a priority without something to go with it.*"

Both Hobbs (R. 58, 596) and Alberts (P. E. 10, R. 840-1) were fearful that respondent might sue all the petitioners for conspiracy because of the activities of Thomasma, while he was a trusted employee of respondent (R. 581-596, 616, P. E. 10, 840-1). So they demanded a general release from civil damages.

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* Petitioners refer (P. B. 28) to Lindsey's memorandum entitled "Minimum Terms for Total Settlement", which Hobbs (R. 584) and Fidler (R. 780) as well as Lindsey (R. 688-9) testified was not submitted. If it had been, as petitioners imply, what of it? One of the propositions was "Flat concession of priority to Zimmerman."

Alberts and Snap-On,—which held title to the Larson application,—to whom Larson had already confessed his perjury, haggled for unreasonable terms and notified respondent's attorney on December 17th, that "no further concessions can be made by Snap-On Tools Corporation" (D. E. 73, R. 1057-61). The next day Alberts advised Hobbs that Snap-On would require Larson to "furnish tangible security to indemnify Snap-On" before Snap-On would re-assign the Larson application to Larson (P. E. 32, R. 876-7), and Hobbs replied that Snap-On's demand for security was "unreasonable" (P. E. 34, R. 880). On December 19, Alberts advised Snap-On that his "effort all along has been to stiffen Larson's position so that he would not leave Snap-On * * * holding the bag * * *" (P. E. 10, R. 841-2).

Yet in the face of this evidence, which the Court of Appeals reviews in its opinion, petitioners' counsel have the temerity to state on page 46 of their brief "A concession of priority would have yielded plaintiff the two claims in interference", implying, of course, that respondent bludgeoned petitioners into giving more. As pointed out by the Court of Appeals a concession of priority "would have settled the interference" (R. 1217). Petitioners, now, when again attempting to exploit Larson's perjury so they can pirate respondent's patent rights, admit in their brief (page 38) that "he [Larson] should have conceded priority thereof [the interference claims] is conceded". But, after Larson had confessed to Alberts and Johnson, and during the settlement negotiations, petitioners took every possible step to conceal the perjury and mislead respondent and proceeded to demand terms under respondent's patent rights to protect their wrench business.

Obviously statements in petitioners' brief, such as that "Plaintiff set its own penalty on the crime; its own price on the deliverance" (P. B. 48-9), are rash and unworthy.

The Agreements Are Fair and Legal.

Following their statement that "A concession of priority would have yielded plaintiff the two claims in interference", petitioners ask "What did Plaintiff actually get?" Our answer is that respondent (Plaintiff) got substantially what Hobbs offered, and petitioners got substantially what they demanded, while doing everything possible to conceal the perjury. Hobbs, who did not know of the perjury, testified that he had "obtained the objectives" which he was seeking from the outset (R. 614). Hobbs' offer and the substance of the agreements are admirably set forth by the Court of Appeals in its opinion (R. 1216, 1218-9).

As appropriately pointed out by the Court of Appeals (R. 1222):

> "Moreover, Larson testified that the agreement contained somewhere near a reasonable settlement, and his attorney Hobbs said that it was a fair one, and so advised him when he signed it." (Record 101, 236, 601).

It is perfectly clear that respondent took no advantage of the situation to drive a hard bargain with petitioners.

After asking "What did plaintiff acually get?", petitioners make it clear that the gist of their complaint is that respondent got the Larson application and the petitioners covenanted not to contest the validity of any claims that might issue in the Larson patent.

Petitioners, of course, do not inform this Court that the Larson application was assigned to respondent in lieu of paying royalties, as Hobbs had originally proposed (R. 791).

And what is there unfair or illegal about petitioners' covenant not to contest validity of the Larson patent. Petitioners are assignors and therefore in the absence of

the express covenant in the agreements, petitioners would be estopped anyway as a matter of established law from contesting validity of the claims of the Larson patent. Covenanting to do what the law already requires could hardly be an illegal act. It is not to be overlooked that the Larson invention and application were assigned to respondent for a valuable consideration to wit: Respondent's granting to petitioners the free license to make and sell 6,000 wrenches and respondent's full release to petitioners as to civil damages.

Moreover petitioners were getting the better of the bargain because the Larson application no longer represented great value to them. A new wrench had been devised by Larson (R. 610) which petitioners plead (R. 11) "involved an entirely different principle of construction" from that of the Larson application, and in their brief (p. 47) maintain is "a structure entirely different from anything ever made by Plaintiff or made by Larson and Precision prior to the interference settlement" which if sound would take it outside of any legitimate scope of any patent to issue upon that application. As mentioned in the opinion of the Court of Appeals (R. 1220):

> "As soon as those orders were filled, [orders on hand at the date of the settlement December 24, 1940] Precision began to furnish, and Snap-On began to sell, a modified wrench for which Alberts had prepared a patent application for Larson on December 26, 1940, on which day Larson executed it at Snap-On's place of business."

With respect to adding claims in the Larson application, the Court of Appeals very appropriately said (R. 1223-4):

> "The defendants further contend that the claims added to the Larson application after its assignment to plaintiff, which claims were subsequently allowed by the

examiner, were not within the purview of the parties' contract. The examiner is not bound by contractual limitations of the parties as to the additions or rejections of claims. Here, however, the contract is silent on the subject, and we know of no reason why proper additional claims may not be allowed to the assignee under the name of the inventor as well as to the inventor before assignment. Whether the examiner erred in allowing one or more of the additional claims, or whether any of the claims are valid are questions which are not before us on this appeal. The patent is presumed to be valid, and we hold that additional claims were not precluded by the contract of the parties. *Nor did their allowance render the contract between plaintiff and the defendants an unconscionable one.*"

The Court of Appeals' position in this regard is well supported by the following authorities:

Westinghouse Co. v. *Formica*, 266 U. S. 342; *Foltz Smokeless Furnace Co. et al.* v. *Eureka Smokeless Furnace Co.*, 256 Fed. 847 (C.C.A. 7th); *Stubnitz-Greene Spring Corp.* v. *Fort Pitt Bedding Co.*, 110 Fed. (2d) 192 (C.C.A. 6th), *Swan Carburetor Co.* v. *General Motors Corp.*, 42 Fed. (2d) 452 (D.C.N.D. Ohio), affirmed 44 Fed. (2d) 24.

As to respondent's "seeking to exploit the contracts" (District Court Fact Conclusion No. 16),—whatever that may mean—we cannot see how respondent's hands could become unclean by asserting their rights against petitioners with respect to petitioners' infringment of either the Zimmerman patents or of the Larson patent. Surely it was not unconscionable to go upon petitoners' acknowledgment of their validity when they had themselves stood for patentability of the Zimmerman invention when setting up Larson as a rival claimant, and they were assignors of the Larson application for what was separately patentable as his improvement over Zimmerman.

Petitioners insist that their accused wrench embodies a different principle from that of the wrench of the Larson patent assigned to respondent, or of the Zimmerman patents. This is not the place to argue that question for it was reserved along with all other patent issues when the severance was ordered (R. pp. 88, 89).

Indeed it seems clear that the question of illegality or non-enforceability of the contracts for any such reason as their being offensive to anti-trust laws in committing petitioners to validity of the patents, is not one for review at this time, since no such question was within the scope of the issue severed for trial, nor made the subject of evidence at the trial, nor argued before the District Court, nor were any findings proposed in reference to it. Neither did the Court of Appeals pass upon any such question. It simply remains as an issue raised by the pleadings (R. 9) for ultimate consideration upon trial of the patent phases of the case having regard to petitioners' right to challenge validity of the Zimmerman patents.

There is No Merit in Petitioners' Theory That Larson's Original Patent Application Was Fraudulent.

Petitioners' counsel apparently recognizing the weakness of the ground (respondent's "silence") upon which the District Court found respondent's hand "unclean" and well knowing that petitioners' assignment of the Larson application and their covenant not to contest validity of the claims of the Larson patent were *per se* perfectly proper, find it necessary to urge (P. B. 47 to 49) that the covenant was bad on the unfounded contention that Larson's oath to his application was false because he was *not* the *sole* inventor of what was claimed. Petitioners assign no error in this regard when specifying errors "to be urged".

Nevertheless we will now proceed to demonstrate that this contention is without merit, as held by the Court of Appeals.

Petitioners dare not maintain that Larson had no part in the invention. They undertake to deal with the proofs in such a way as to convey the impression that all Larson did was to embody Thomasma's ideas, but, knowing the weakness of that proposition also, they stand upon the ground that Larson and Thomasma were *joint* inventors and that Larson swore falsely when setting himself up as *sole* inventor.

None of the petitioners pleaded *fraud* or *unclean hands* in the *filing* of the Larson application, or in its *prosecution*, on the ground that Larson was not the sole inventor*. Petitioners pleaded perjury only in connection with "the subject matter of the counts then in interference" (R. 9 and 31). Larson inserted the claims constituting the counts in his application for purposes of the interference long after it was filed and the Larson patent of course did not contain those claims when it issued, as respondent's attorneys cancelled them promptly after the application was assigned to respondent. Petitioners' counsel asked no finding as to fraud in the filing of the Larson application (R. 1117-20). The District Court made none (R. 1121-25). Indeed, the Larson application as originally filed was not even before the Court when it entered its findings, the findings having been entered on July 12, 1943 (R. 1121) and the stipulation with respect to the original application not having been filed with the Court until August 6, 1943, at which time printed copies of the three patents in suit were made part of the record by a second stipulation (P. E. 64a and 68, R. 906 to 913).

*Snap-On pleaded in its Third Petition (R. 21) "upon information and belief" that the patent was invalid "because the alleged invention of Kenneth R. Larson [was] the joint contribution of the said Kenneth R. Larson and George Thomasma, the latter contributing and furnishing *at least* a substantial portion of the disclosure."

The Court of Appeals disposed of this proposition as follows:

> "At that time [when Larson originally filed his application] the application did not claim anything that was common to the Zimmerman and Larson wrenches, but the claims, as interpreted by the disclosure, were limited to a detail which comprised a *tail-piece* for operating a gauge mechanism. *This, we think the evidence clearly discloses, was Larson's contribution, and it was so asserted at the trial by Alberts.*" (R. 1212-3.)

> "The defendants further contend that the Larson application should have been a joint application by Larson and Thomasma. *This record does not warrant such conclusion,* and we think our conclusion in this respect is strongly supported by the facts that the application was filed on October 1, 1938, by Alberts, the attorney for Larson and Snap-On, and it was assigned to Snap-On. The defendants and Alberts were fully informed as to the contents of the Thomasma affidavit on November 28, 1940, which fully stated his connection with the Larson disclosure. The defendants continued to operate under the pending application and raised no question as to Thomasma's joint authorship of Larson's disclosure until March 1, 1943, when Snap-On, by Alberts, filed its amended petition for a declaratory decree. This was more than three years after they had full knowledge of the contents of the Thomasma affidavit, and more than two years after Larson had secretly confessed his perjury to them" (R. 1223).

The Court of Appeals in stating that the original application claims covered Larson's contribution "and it was so asserted at the trial by Alberts", manifestly had in mind Alberts' testimony with respect to his letter of January 31, 1941 to Krichiver, Thomasma's attorney, in which Alberts stated:

> "*Mr. Larson was given credit* [by Thomasma] for *the major part of the development* that entered into the result constituting the basis of the patent application." (P. E. 20, R. 859, 861).

With respect to this letter Alberts testified (R. 465):

> "he [Thomasma] *acknowledged that the greater part of the work on that wrench was done by Larson; that Larson's idea was to place the indicator in the handle end of the wrench, put an extension on the flexible beam to translate the flex of the beam* to such an extent that a *more accurate performance could be acquired in taking measurements* or *viewing the indicator to register those measurements;* that that part of the wrench was *his* [Larson's] invention."

It is interesting in passing to note that even petitioners in their brief here emphasize that the Larson application was filed with "*narrow*" claims (P. 10, 46).

Thomasma, in his affidavit said that the Larson application was properly filed in Larson's name, as follows (R. 1002):

> "Q. That particular improvement that was covered by the application, whose improvement was that? Who made the suggestion respecting the reduced end piece connecting with the gauge?
>
> A. Larson made that.
>
> Q. Therefore, it was proper for the application to be filed in his name?
>
> A. That's right."

Thomasma, with his knowledge of Zimmerman's constructions, had proposed to Larson that a round rod be mounted directly on the work-engaging member (R. 963),—scarcely an inventive idea since in one of Zimmerman's applications (Figs. 7 to 11 of No. 2,283,888, R. 1162) a

square spring bar 2 appears so mounted, and in Zimmerman's other application a round rod appears (Figs. 2 & 3 of Re. No. 22219, R. 1184). He also proposed to have the indicator carried by the cover of the chambered body (R. 969), again scarcely an inventive idea since it involved a mere reversal of parts.

Those were not the features claimed in the original Larson application. The inventive contributions were rather to be found in the "manner in which the dial reading was taken on the spring bar" (R. 1002), involving the swiveled mounting of the spring member intermediate of its length with the indicator operated through connection with the extremity of that member, the indicator being located at the handle end of the chambered body. *These are the things that were worked out by Larson and covered by his application.*

It appears from the Thomasma affidavit (D. E. 21, R. 952-1012) that the first patterns were made by Larson "*entirely on his own*," as Larson "*took things in his own hands*" (R. 963). Larson in making the pattern placed the swivel bearing near the middle of the casing chamber. Then Larson fixed a reduced rod to the end of the beam, and the first wrench, which was completely finished and which was satisfactory, had this reduced rod extension (R. 894).

Certainly, the burden rested upon petitioners, and a heavy one at that, to establish any such thing as that Larson was not legally entitled to lay claim to the invention, when Thomasma gave him "credit for the major part of the development," according to Alberts himself. We submit that this burden has by no means been sustained.

The most that can be said for Thomasma as to his part in the inception and promotion of the idea of improving upon respondent's wrench is that he had the embryo when his

collaboration with Larson began. He cannot be accredited with the development of that embryo into a complete conception of an invention,—much less its embodiment in concrete form. That was Larson's work.

It is perfectly clear upon the proofs that Thomasma could not stand as sole inventor. Petitioners' counsel concede that much when taking the position that it was a joint invention. Conceivably a joint application for patent might have been justified but we submit that, for the reasons we have given, going by the record, a sole application in Larson's name was proper, and that the charge of fraud in its filing or fraud in its prosecution is preposterous.

We therefore maintain that Larson was thoroughly entitled to claim as he originally did and that he made no misrepresentation and certainly committed no fraud in swearing to his application as originally filed.

The falsity of Larson's subsequent oaths to inventorship of what was common to his application and Zimmerman's could not render false his original oath to inventorship of what lay outside of that, nor justify refusal of a patent to him on that which he had invented as an improvement over Zimmerman's invention.

Neither the Patent Office nor a Chancellor could justify extinguishment of Larson's right to a patent upon his own invention, as a penalty for having for a time falsely claimed what Zimmerman had invented.

It follows that no culpability could possibly attach to respondent's acquisition of that right from Larson.

Yet we find petitioners arguing that it was a vicious thing for respondent to acquire the Larson application and to prosecute it for what it carried that Zimmerman did not have. And petitioners inveigh against their own covenant

not to contest validity, making reference to public interest. How, may we ask, is public interest affected by an express agreement on the part of an *assignor* of a patent application never to challenge validity of the patent issued upon that application when he is estopped to do so anyway? Surely it cannot be that a patentee who has sold his patent for a valuable consideration can turn around when sued for infringement and defend on the ground that the consideration from him to his assignee was worthless. That would certainly smack of fraud. And what is so sinister about the assignee's solicitor obtaining a full measure of protection by way of prosecuting claims in addition to those remaining after deletion of the false interference counts?

The District Court made no finding upon this,—none had been proposed by petitioners. However, the Court of Appeals spoke as follows:

> "Whether the examiner erred in allowing one or more of the additional claims, or whether any of the claims are valid are questions which are not before us on this appeal. The patent is presumed to be valid, and we hold that additional claims were not precluded by the contract of the parties. Nor did their allowance render the contract between plaintiff and the defendants an unconscionable one." (R. 1224.)

Naturally, petitioners maintain that no such additional claims should have been allowed as those which read upon their accused wrench. Of course not, because that gave ground for checking further depredations whereby to ruin respondent's business. But this assumes dereliction on the part of the Patent Office which certainly is presumed to have given proper consideration to the important matter of support for all claims by the disclosures upon which they must necessarily be founded.

There Were No Threats, Implied or Otherwise.

Petitioners' counsel still are not satisfied with their "House that Jack Built" type of defense, so they tack on "threats" (P. B. 49), notwithstanding that they did not ask the District Court for any "threat" finding, that the Court made none and that the Court of Appeals analyzed the evidence and effectively disposed of the charges of threats and coercion. With respect to this matter we have already quoted from the Court of Appeals opinion on pages 19 to 21, *supra*.

On page 49 of petitioners' brief, reference is made to Lindsey's letters of December 18th (P. E. 30, R. 875) and December 19th (D. E. 68, R. 1048-50). Apparently these are the letters that Court of Appeals said Alberts "laid great stress" upon and that:

> "Certainly these were not direct threats, and his interpretation of them is based purely upon inferences which we think were not warranted, and were mere products of his imagination." (R. 1222.)

A mere reading of Lindsey's letter of December 18th will show that any inferences of threats therein are mere products of the imagination.

So likewise with Lindsey's letter of December 19th. The Court of Appeals quotes from this letter (R. 1217) and succinctly and accurately stated many of the attendant facts and circumstances (R. 1216 to 1218) which are not challenged by petitioners.

Alberts remained attorney of record for Snap-On and Larson in the Patent Office. Respondent's attorneys naturally wished to proceed promptly with the taking of depositions on behalf of Zimmerman, as the settlement of negotiations had broken down, Alberts having notified respond-

ent's attorney in his letter of December 17 to either accept Snap-On's terms or proceed with the proofs. (P. E. 73, R. 1057). It was proper for Lindsey to point out that as such attorney, Alberts was obligated to have the transcription of the Larson interference testimony completed, and completed accurately, and that after receiving the notice of taking depositions on behalf of Zimmerman Alberts should not have attempted to substitute Hobbs who had some days before positively advised Alberts, Lindsey and Fidler that he was retained only in connection with a settlement and that he would *not* represent Larson in the Patent Office Interference (R. 586-7; 691; P. E. 34, R. 879). Lindsey admitted that he did strongly suspect that Johnson and Alberts had confronted Larson and Carlsen with Thomasma's story, and suspected that Larson and Carlsen had confessed their perjury to Alberts and Johnson. Lindsey properly felt that if that were the case, Snap-On and Larson should file in the Patent Office a concession of priority as to the counts of the Interference. Alberts virtually denied that there was any such confession in his reply of December 19th. Lindsey's "shot," in an effort to "smoke out" Alberts and Johnson, that they should realize that the Larson story was not the whole truth proved to be well directed. So likewise did his "shot" that the issuance of the Zimmerman patent was being held up without justification.

Where are the implied or direct threats in Lindsey's letters? Threats to do what? And threats against whom?

We would note that on page 32 of petitioners' brief is the misleading statement that on December 20th "Lindsey apologized for Alberts' interpretation of Lindsey's letter [of December 19] (R. 699)". There was no apology, as such. Lindsey's testimony, which was confirmed by Alberts himself on page 431 of the record, was as follows (R. 699):

"I wanted to clear that up first and I told Mr. Alberts that he had read into that letter many things that wasn't there, many things which were not intended, that I was not accusing either Mr. Alberts or Mr. Johnson of anything in that letter, that the only thing I wanted to make clear to him was that he had responsibility with respect to obtaining the untranscribed testimony in the Interference and, if he wished to withdraw, he should file a proper substitute power of attorney in the Patent Office so we would know who to serve papers on as required by the Rules of Practice of the Patent Office."

This occurred at the very beginning of the December 20th conference between Hobbs, Alberts, Lindsey and Fidler. *Thereafter* the attorneys arrived at the settlement terms, which were, in fact, substantially those originally proposed by Hobbs and which were more favorable to petitioners than the terms respondent had previously suggested. So what becomes of petitioners' "implied threats" in Lindsey's letters? And as pointed out by the Court of Appeals, "Johnson testified that neither he nor his company was coerced into signing the agreement either directly or *indirectly*" (R. 1222) and "Larson testified that the agreement contained somewhere near a reasonable settlement, and his attorney Hobbs said that it was a fair one, and so advised him when he signed it." (R. 1222.)

There Were No "Promises" Not to Prosecute and No Agreement to Suppress Evidence.

Also on page 49 of petitioners' brief is the statement that the "evidence is irreconcilable" with respect to "promises made to protect Larson against prosecution for perjury." Nowhere in that brief or in the petition for the writ do petitioners' counsel even attempt to directly enlighten the court as to any promises, nor do they refer to any page of the record in connection with that matter.

Petitioners in their chapter entitled "The Notebooks of the Larson Depositions are Destroyed" (P. B. 33) first say that the "testimony as to whether or not there was discussion of the destruction of the evidence of Larson's perjury" is "in irreconcilable conflict." Then they refer to the two missing notebooks of the shorthand reporter. These statements may imply that there was an understanding to suppress evidence and therefore an implied promise not to prosecute Larson. Petitioners did not request the District Court to make any findings on these matters and that Court made none.

The Court of Appeals disposed of these matters as follows (R. 1222-3):

> "The District Court did not believe the testimony of Larson, Carlsen or Alberts, or any other witness, where it contradicted Hobbs' testimony, and the latter did not disagree with the testimony of plaintiff's attorneys which related to the same facts. Some, if not all, of these first-named witnesses testified to an agreement among all the attorneys that all the evidence, incriminating or otherwise, would be destroyed. This testimony was denied emphatically by Hobbs and plaintiff's attorneys, and their denial is supported by the fact that no part of the evidence adduced was ever destroyed, and all of it is set forth in the printed record now before us, or is in the hands of the clerk of this court. Hobbs had notified plaintiff's attorneys that he desired all evidence preserved. A portion of Larson's proofs had not been transcribed and never has been, and some parts had been transcribed incorrectly. When Fidler notified Alberts of his intention to take plaintiff's proofs and of his desire to have full copies of Larson's proofs, Alberts notified his reporter of that fact, and requested him to complete his transcription and notified Fidler of that fact. They were not completed when the settlement was executed, whereupon, in compliance with Hobbs' request to preserve all evi-

> dence, Fidler notified the reporter of the settlement and requested him to deliver his transcriptions and his untranscribed notes to Alberts, who had employed him for the defendants. *The defendants now stress this circumstance as proof of plaintiff's effort to conceal and suppress testimony. There is no merit in this contention.*"

Except for the statement in the first sentence of the above quotation, petitioners' counsel do not quarrel with or attempt to point out any error in the Court of Appeals' statements of fact. Petitioners assign no error with respect to them (P. B. 35).

Petitioners' bald statements (P. B. 23) that two of the reporter's notebooks were destroyed and that Fidler wrote the reporter to deliver to Alberts all of the notebooks and the transcribed testimony could only be made with the intention to imply that there was an understanding to suppress this evidence. Petitioners should have been frank with this Court by stating the full facts, which demonstrate exactly the opposite of what petitioners would imply.

At the December 24th conference between Alberts, Hobbs, Fidler and Lindsey, it was agreed that the notebooks and transcribed testimony should be preserved and that to this end the reporter should turn them over to Alberts. This is fully supported by Fidler's letter of December 26th to the reporter (P. E. 15, R. 845), Fidler's letter of the same date to Alberts (P. E. 22, R. 865), and the testimony of Hobbs (R. 591) and Lindsey (R. 700-1). Not only Hobbs, but also Lindsey and Fidler, wanted the evidence preserved (R. 595, 632-3, 701, 785-6). The reporter's work showed that he was not the most responsible sort of reporter (R. 701) and Alberts himself had written the reporter "I have never received such poor service in years past from other reporters" (D. E. 103, R. 1103). The reporter delivered the

two missing notebooks to Alberts a day or two after December 26th (R. 661), Alberts admitted the reporter brought the books to him in his office, but he contended that they were not left with him because he was not interested in them (R. 479).

If there is an irreconcilable conflict between Alberts and the reporter's testimony, it is in petitioners' own camp, and any implication or contention that respondent's attorneys had a hand in their destruction is ridiculous and unworthy. Petitioners admit (P. B. 33) that all of the other evidence was available, and certainly every scrap of evidence that respondent and its attorneys ever had bearing upon the issues was freely produced at trial.

UNCLEAN HANDS MUST BE BASED UPON ACTUAL KNOWLEDGE RATHER THAN MERE SUSPICION OR IMPUTED OR IMPLIED KNOWLEDGE.

Under well established principles of equity, the evidence must be clear and conclusive that respondent and its attorneys had actual knowledge of Larson's perjury in order to sustain the defense of unclean hands. The knowledge must be actual, rather than implied or imputed. The mere fact that the trial Court thought that respondent and its attorneys should have known of the perjury is insufficient. The doctrine of unclean hands is concerned with the consciences and good faith of the parties at the time of the transaction as distinguished from what circumstances may dictate as to what the parties should have known or should have done. As to what was in the minds or consciences of respondent and its attorneys that is evidenced by their acts in attempting to ferret out the truth by further investigation and the employment of a handwriting expert, all of which brought unconvincing results, and in consulting with and relying upon the advice of competent outside counsel. Now

to substitute knowledge on the basis of what should have been known by the parties for what was actually in their minds and then to base a holding of unclean hands upon that substituted knowledge would be contrary to the principles of the equitable doctrine of unclean hands as established by the authorities.

In the leading case of *Vulcan Detinning Co.* v. *American Can Co. et al.*, 67 Atl. Rep. 339, 341 (Ct. of Errors & Appeals of N. J. 1907), the Court, in refusing to apply the legal principles of agency in order to impute to plaintiff knowledge of the alleged misconduct charged to connote unclean hands, held that the defense of unclean hands could not with propriety be based upon imputed acts or conduct, stating:

> *"In reaching this last conclusion the learned Vice Chancellor fell, we think, into the error of ascribing an unconscionable status to the complainant by force of a presumption of remedial law that in its most extreme application affects only the legal rights of parties and not at all their moral standing.* That the knowledge possessed by an agent, but not acquired by him while acting for his principal, will under certain conditions be imputed to the latter, is in the nature of a presumption indulged in by courts in working out the rights of litigating parties.
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> * * * * * * *
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> *True, he may be bound by it in the sense that his legal rights may be determined with reference to the knowledge with which he is thus chargeable; but his conscience is void of offense, and hence it cannot with any propriety be said that his hands are unclean, for 'unclean hands', within the meaning of the maxim of equity, is a figurative description of a class of suitors to whom a court of equity as a court of conscience will not even listen, because the conduct of such suitors is itself unconscionable—i. e., morally reprehensible as to known facts. The entire ineptitude of*

the presumption respecting imputed knowledge to relegate the complainant in the present case to this reprobated class must, we think, be apparent. As was said by the Kentucky Court of Appeals, speaking through Mr. Justice Burnam (afterward Chief Justice): 'The maxim, "One who comes into equity must come with clean hands," is based upon conscience and good faith.' American Association v. Innis, 109 Ky. 595, 60 S. W. 388.

"Upon the ground stated we think that the learned Vice Chancellor committed error, without regard to the pertinence of the maxim of clean hands to the knowledge that he imputed to the complainant or to the propriety of such imputation."

Another case which clearly supports this proposition is *Journal Plaza Holding Co.* v. *J. H. L. Co., Inc.*, 152 Atl. Rep. 14, 16 (Ct. of E. & App. of N. J. 1930) wherein the court said:

"The lease, in many respects, was indefinite and uncertain, and sufficiently so to justify the tenant in coming into the Court of Chancery for a construction; and we think that the complainant-tenant was entitled to have its legal conception of the lease judicially considered. *It does not appear that any of the officers of the complainant-tenant concealed anything from the court, or that they possessed any knowledge to justify holding that their conduct was unconscionable and such as to render their hands unclean,* within the maxim which is well defined in the syllabus of the case of *Vulcan Detinning Company* v. *American Can Company*, 72 N. J. Eq. 387, 67 A. 339, 12 L. R. A. (N. S.) 102, as follows: *'The maxim, "One who comes into equity must come with clean hands," is based upon conscience and good faith, and the bad faith or the unconscionable conduct that will justify the application of this maxim must be based upon actual knowledge or willful fraud.'*"

Manifestly, if the knowledge of respondent and its attorneys respecting Larson's perjury must have been actual as distinguished from mere suspicion or imputed knowledge, and they had no actual knowledge, their silence respecting their suspicion does not constitute conduct rendering their hands unclean.

RESPONDENT AND ITS ATTORNEYS COMMITTED NO POSITIVE, WILLFUL OR INTENTIONAL WRONG.

We submit that, if respondent and its attorneys should have known that perjury had been committed, their failure to know was the result of a mistake or misinterpretation of the facts. And if their suspicions should have required them to take the matter up with the proper authorities, their view to the contrary, as supported by the advice of competent outside counsel, was at most a misapprehension as to legal responsibilities. The authorities are predominantly to the effect that conduct carried on in good faith and which is not willful or intentional, as distinguished from mistake, inadvertance or misapprehension of legal rights or responsibilities, does not constitute unclean hands.

A recent case clearly applicable to the facts here is *Ohio Oil Co.* v. *Sharp*, 135 Fed. (2d) 303, 308-9 (C. C. A. 10th, 1943). There a suit in equity was brought to impress a constructive trust upon certain leases alleged to have been acquired by appellee through the wrongful use of confidential information belonging to Ohio Co. The trial court dismissed the action on the ground that the facts, as pleaded in the Complaint, affirmatively showed that the information wrongfully obtained and used by appellee was also wrongfully obtained by Ohio through

a trespass upon the property from whom appellee obtained the leases. In that case the lower court found unclean hands; but the Court of Appeals reversed and in so doing stated:

> "Rather, our problem is to translate the trespass or wrongful invasion in terms *of unconscionable or inequitable conduct.* It is pleaded and hence must be conceded that the geophysical survey was conducted in accordance with the customary and standard practices employed in Oklahoma, and that the tests were made upon the highway abutting the lands involved with the written consent of the owners of the surface, in good faith and with the honest belief that the Ohio had the right to make such tests. If it did not have such right, its good faith and honest belief will not relieve it from an actionable wrong, but not every actionable wrong amounting to a trespass or an invasion of the property rights of others is iniquitous, inequitable or unconscionable. *It is well settled that one who invades or trespasses upon the property rights of another, while acting in the good faith and honest belief that he had the lawful and legal right to do so, is regarded as an innocent trespasser* and liable only for the actual damages sustained. • • • No evil or illegal intent, purpose or design can be attributed to the complainant under the facts as alleged. In these circumstances, we think the Ohio should be cast in the role of an innocent trespasser, and it stands before the bar of equity tainted with this onus. *But its good faith conduct, although said to be an actionable wrong, is not unconscionable or sufficiently culpable to repel it from a court of equity.*"

Another pertinent case is *Goodyear Tire & Rubber Co. v. Overman Cushion Tire Co.*, 95 Fed. (2d) 978, 982, wherein the Court of Appeals of the Sixth Circuit said:

> "We are in agreement with the lower court that the Keystone Case is not applicable here, because Overman had no corrupt intent in making the Nelson con-

tract. He intended by the contract only to continue Nelson's employment, which included work on the cases. *There was no thought of suppressing evidence* or of inducing the witness to testify falsely. Under duress, Overman yielded to Nelson's demand, just before the time when it was believed, though erroneously, that as a witness testifying only to the truth, he was essential to the establishment of plaintiff's case.

"*Defendant's contention that corrupt intent is immaterial cannot be sustained* in the light not only of the Keystone opinion and the cases therein cited, but of a host of other decisions."

This rule was also aptly stated in *Lavretta et al.* v. *First Nat. Bk. of Mobile*, 178 So. Rep. 3, 6 (Sup. Ct. Ala. 1937) as follows:

"*The rule or maxim, he who comes into equity must come with clean hands, is based on conscience and good faith. It follows that bad faith or unconscionable conduct that falls within the maxim must rest upon a positive or willful wrong, must involve intention as opposed to an inadvertent act or a mis-apprehension of legal rights.* Such is the effect of the decisions in this jurisdiction [Citing authorities.]"

In *Valley Smokeless Coal Co.* v. *Manufacturers Water Co.*, 153 Atl. Rep. 327, 329 (Sup. Ct. Pa. 1930), the court applied this doctrine, using the following language:

"• • • It is not urged that there was an intentional removal of support under the strip by the coal company, or that objection was made by defendant to the manner of cutting, though known to it at the time, and the court found the support thus removed could be replaced, though the work of so doing would be expensive.

"(6-10) It is insisted, under the circumstances, that plaintiff, because of the excess cutting, does not come

into court with clean hands, and no decree in its favor should therefor be entered. *In order to apply the rule referred to, it must appear that the misconduct has been willful* (*Lewis & Nelson's Appeal*, 67 Pa. 153), *and not merely negligent* (*Bradly* v. *Jennings*, 201 Pa. 473, 51 A. 343)."

Another interesting case which deals with situations wherein there is "room for mistake" and wherein the alleged misconduct was found not to be unclean hands because it was not willful and intentional is *Green* v. *Veder*, 57 S. W. Rep. 519, 525 (Ct. of Ch. App. Tenn. 1900). There the court found:

> "All these things go to show that there was *room for mistake* in the mind of Dr. Ikirt as to the condition of the land. * * * *Taking all of these circumstances together, we are unable to find that Dr. Ikirt was guilty of a premeditated fraud.* * * * The matter, however, is of importance now only for the purpose of determining whether the complainant, representing Dr. Ikirt, should be repelled from court because of his misrepresentations. *We are unable to find, as stated, that these misrepresentations were willfully or intentionally false, and therefore, we do not think that Dr. Ikirt was guilty of such a degree of turpitude as would repel him or his representative from the portals of a court of chancery.* * * * *We have found that, while Dr. Ikirt's representations were of such a character as would have authorized a rescission upon the part of Veder because the representations were material and untrue, yet they were not made by Ikirt with such a knowledge of their falsity as would justify the court in repelling him.*"

In the instant case the evidence shows that the conduct of respondent and its attorneys was carried on in the best of good faith. There was nothing reprehensible or immoral in their conduct. They used every means available to seek the truth. It was their belief that the evidence of perjury they

then had was insufficient under the circumstances to warrant taking the matter to the District Attorney. This belief was confirmed by competent outside counsel, Mr. Dunbar of Chicago and Mr. Thomas of Washington, D. C. In accordance with the advice of both of these counsel, and after weighing the facts, respondent and its attorneys, in good faith and out of caution, did not present the matter to the District Attorney, in order to avoid involvement of respondent in a suit for false arrest, defamation of character or malicious prosecution. This conduct was not based upon any ulterior motive; nor can it be deemed unconscionable or inequitable. The most that can be said of the conduct of respondent and its attorneys is that, if they erred, it was an honest mistake of fact or misapprehension of legal responsibility. This does not constitute unclean hands.

RESPONDENT'S FAILURE TO REPORT ITS SUSPICIONS OF LARSON'S PERJURY TO THE DISTRICT ATTORNEY WAS NEITHER A VIOLATION OF THE MISPRISION STATUTE NOR CONTRARY TO PUBLIC POLICY.

It is petitioners' position that respondent's hands are unclean because it violated the federal misprision statute (18 U.S.C.A. Sec. 251, Criminal Code, Sec. 146) by its failure to inform the authorities of Larson's perjury. Such a position is untenable under the authorities. This statute reads as follows:

> "Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, *conceals* and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined not more than $500, or imprisoned not more than three years, or both."

Petitioners urge this statute as an expression of national public policy. If that be true it necessarily follows that any act which does not violate the statute does not violate public policy. It is well established by all those Federal Courts, including this Court, which have had occasion to consider the misprision statute, that an affirmative act of concealment or suppression, in addition to mere silence, is a necessary element of the crime. Such was the ruling by Judge Morton of the District Court for the District of Massachusetts in quashing an indictment in *United States v. Farrar*, 38 Fed. (2d) 515, 517:

> "The Act of April 30, 1790, as amended (18 U. S. C. A. § 251), requires *both concealment and failure to disclose*. Under it some affirmative act toward the concealment of the felony is necessary. *Mere silence after knowledge of the commission of the crime is not sufficient*. The allegations of the indictment do not bring it within this statute."

The judgment of Judge Morton was affirmed by this Court at 281 U. S. 624.

The misprision statute was interpreted and applied in exactly the same manner by the Court of Appeals of the Tenth Circuit in *Bratton v. U. S.*, 73 F. (2d) 795, 797. There the Court in reversing a conviction under the statute for not disclosing knowledge of a felony said:

> "Section 146 was enacted April 30, 1790 (1 Stat. 113, § 6), and as far as the researches of court and counsel disclose, has been before the courts but twice in the 144 years of its life. It provides that there must be *both a concealment and a failure to disclose* in order to constitute a criminal offense. The language is 'conceals and does not as soon as may be disclose'. Some meaning must be given to the words 'conceal and'. If it should be held that a failure to disclose is in itself a concealment, then a conviction may be had for a

failure to disclose without more, and the words 'conceal and' are thus effectively excised from the statute.

"Following settled rules of construction, we must assume that Congress intended something by the use of the words 'conceal and'. If any meaning is to be given them, an indictment must allege something more than mere failure to disclose—*some affirmative act of concealment*, such as suppression of the evidence, harboring of the criminal, intimidation of witnesses, or other *positive act designed to conceal from the authorities the fact that a crime had been committed*. Furthermore, some such interpretation is necessary to rescue the act from *an intolerable oppressiveness* and to eliminate a serious question of constitutional power. Whatever may have been the case in 1790, when federal felonies were few, the act if otherwise construed would be but *another unworkable and unenforceable law in latter days*. Take the case here: The defendant was a state peace officer; he would be guilty of a felony under any other interpretation, even if he turned his prisoner over to the proper state authorities and swore to a complaint, if he failed promptly to report the arrest to federal authority. The bystander who saw a federal felony committed would become a felon if he did not promptly report it, although federal officers apprehended the criminal on the spot. The guest at a club or a dinner in Eastern Oklahoma would lately have been a felon if he had not promptly reported to the nearest federal judge the fact that he observed another guest in possession of a beverage of proscribed alcoholic content. An interpretation leading to such an intolerable conclusion should not lightly be imputed."

After stating the above, the Court then referred with approval to *United States* v. *Farrar, supra*, and pointed out that this Court had affirmed the lower court in that case as follows (p. 798):

"It was so held in *United States* v. *Farrar* (D. C. Mass.) 38 F. (2d) 515, 517. There Judge Morton held

that a purchaser of intoxicating liquors could not be convicted under this act, although he had knowledge of a felonious sale and did not report it,"

* * * * *

The Supreme Court of the United States affirmed. 281 U. S. 624, 50 S. Ct. 425, 74 L. Ed. 1078, 68 A. L. R. 892. While the Supreme Court did not mention this statute, Judge Morton's opinion called it to the attention of the high court, and if that court had believed that failure to disclose, without more, was a crime, then a reversal must have followed."

In citing with approval the Bratton and Farrar cases, supra, the Court of Appeals for the Eighth Circuit in *Neal* v. *U. S.*, 102 F. (2d) 643, 646, 649, made the same ruling and said:

"To sustain a conviction on count two for misprision of felony it was incumbent upon the government to prove beyond a reasonable doubt (1) that John L. Neal, the principal, had committed and completed the felony alleged prior to January 7, 1938; (2) that the defendant had full knowledge of that fact; (3) that he failed to notify the authorities; and (4) that he took two affirmative steps to conceal the crime of the principal, viz., (a) he concealed $5,903 of the stolen money in a golf bag, and (b) he knowingly altered and expunged from the books of account of the Neal Funeral Home entries showing the investment of John L. Neal therein, which money so invested was a part of the stolen money."

* * * * *

"The elements of the offense under the statute are two: There must be (1) a concealment of something such as suppression of the evidence or other positive act and (2) a failure to disclose. *Proof of one of the elements only,* and *not of both,* is *not sufficient to support a conviction. Bratton* v. *United States,* 10 Cir., 73 F. 2d 795, 797; *United States* v. *Farrar,* D. C. Mass., 38 F. 2d 515, 517."

Thus under the above decisions mere silence is not a violation of the misprision statute. The national public policy is, therefore, not as harsh as petitioners would have it. In the instant case, the evidence clearly shows that there was no affirmative act of concealment by respondent and its attorneys. The petitioners do not urge it. The District Court made no such finding. The Court of Appeals specifically found that there was no affirmative act of concealment, and that "under the circumstances of this case it is clear that no duty devolved upon plaintiff [respondent] to report its information to either the District Attorney or the Patent Office" (R. 1222.)

This Court had early defined the national public policy applicable to civil cases of this kind in *Marbury* v. *Brooks*, 7 Wheaton 556, 576, 578-9 (1822). There a deed conveying certain property, which had been charged was given to compound a felony, was held valid and binding in the absence of an agreement to compound the felony, although there was knowledge that the felony had been committed. After discussing the evidence and charges in detail, Chief Justice Marshall stated:

> "It may be the duty of a citizen to accuse every offender, and to proclaim every offence which comes to his knowledge; but the law which would punish him in every case for not performing this duty is *too harsh for man.*"
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> . . . . . .
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> "The fact, in its strongest aspect, is, that a deed was made, giving this preference in the hope that it would propitiate the preferred creditors, and prevent their being so active as they might otherwise be in proceeding against the criminal. But the facts, as they stand, show no agreement made at any time to forbear to prosecute, nor that the interest of the creditors would be in any manner affected by the institu-

tion of a prosecution, and carrying it on to the conviction of the offender.

"If Fitzhugh had remained, and his crime had not been discovered he might have sold all the property comprised in this deed, and might have applied the money to the notes he had counterfeited. His hope that this act would conceal the crime, and save him from punishment, would not have vitiated the transaction."

. . . . . .

"Would the hope in his own bosom, that such conveyance might have the effect of exempting him from a prosecution, unaccompanied by any act of the favored creditors giving countenance to such hope, avoid the deed?

"The consideration moving from the creditor, would be a real debt, and consequently a valuable and fair consideration. It would not be tainted by any secret hope working in the mind of the maker of the deed. It would not be the less fair on account of that hope. We think that the validity of such a deed could not be drawn into question."

Thus, in a civil case, this Court has refused to penalize a party for mere silence and failure to inform the authorities of the commission of a crime, and it is significant that such refusal was made at a time when the misprision statute relied upon by respondents was in full force and effect.

As we have pointed out, the question of unclean hands is a matter for the application of local law and so we shall make reference to Illinois statutes and to decisions of the Illinois Courts regarding the question of public policy here involved.

Defendants pleaded (but do not here urge) violation of the compounding statute of the State of Illinois (Ill. Rev.

Stat., Criminal Code, Chap. 38, Sec. 135), which reads as follows.

> "135. *Punishment*, Sec. 43. Whoever takes money, goods, chattels, lands or other reward, or promise thereof, to compound any criminal offense, shall be fined in double the sum or value of the thing agreed for or taken; but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense."

This statute states the public policy of the State of Illinois as to the validity of contracts with criminals and clearly places no mandate upon the injured party to report the commission of a crime to the authorities. It is clear from the decisions interpreting the statute that contracts by which goods or property of the injured party are recovered or by which the injured party is compensated for the injury occasioned by the commission of an offense are valid and enforceable in the State of Illinois, provided the agreement was not grounded upon a promise, express or implied, to abstain from prosecution and to suppress or conceal the evidence. Neither the District Court nor the Court of Appeals found such an agreement in the instant case.

The general rule of law under the Illinois statute is clearly set forth in *Farmers National Bank* v. *Rosenkrans*, 240 Ill. App. 230, 236 (1926), as follows:

> "But it is not illegal merely to compromise the civil injuries resulting from a criminal act where it is not expressly or impliedly agreed that the prosecution for the crime is to be prevented or suppressed and a note given in consideration of moneys embezzled is valid and enforceable, there being no agreement to conceal or suppress a prosecution for the offense. 3 R. C. L. 958. The true rule seems to be that notwithstanding the pendency of criminal proceedings against a wrong-

doer one whose money or property has been fraudulently obtained may contract for repayment of the money or satisfaction for the loss sustained and take security therefor, without invalidating the contract, unless there be included therein, as a part of the consideration therefor, some promise or agreement, express or implied, that such prosecution shall be suppressed, stifled or stayed. *Northfork Board of Education* v. *Angel*, 75 W. Va. 747, 84 S. E. 747, L. R. A. 1915E 139."

In the present case respondent entered into the agreements to secure its property to which it was justly entitled, to wit, its exclusive property rights in the Zimmerman wrench inventions involved in the interference. The Larson application, however, was not received by respondent as property which had been taken from it. That application was received only in consideration of the right which respondent gave petitioners to make additional wrenches in lieu of royalties and of the release given by respondent to petitioners as to all civil damages. Respondent, in so entering into the agreements, did not therefore violate public policy and its conduct in entering into the agreements and failing thereafter to report the matter to the authorities did not constitute unclean hands. What respondent did was fully within the expressed public policy of both the State of Illinois and the United States.

THE PARTIES ARE NOT IN PARI DELICTO AND, TO SUSTAIN THE DEFENSE OF UNCLEAN HANDS, WOULD GIVE COUNTENANCE TO THE REPREHENSIBLE ACTS AND CONDUCT OF PETITIONERS.

The Courts have consistently applied the rule of "moral estoppel" to prevent one from profiting by his own wrong, particularly where, in comparison with the conduct of an-

other, to so do would countenance morally reprehensible acts and result in greater offense to morals, good conscience and public policy. A court will not aid a litigant in the promotion of fraud and, where good conscience requires it, will apply the rule that where the parties are not *in pari delicto*, relief should be given the one that is comparatively innocent. It is almost axiomatic that a Court under such circumstances will not invoke a maxim of equity to defeat equity.

In this case the petitioners seek to void their obligations under the agreements and also to invade respondent's patent rights by relying upon their own reprehensible and immoral conduct. To bar respondent on the ground of unclean hands would result in fostering and furthering petitioners' nefarious scheme of depriving respondent of its exclusive rights under the inventions involved herein.

The Supreme Court of Wisconsin, in *In Re Wilkins Estate*, 211 N. W. Rep. 652, 655-6 (1927), made it clear that the sustaining of the defense of unclean hands in a case like this would have the effect of defeating the purpose of all law. The Court said:

> "The equitable doctrine that a man shall not profit by his own wrong dates back centuries in the history of the common law, and is as old as equity itself. It is recognized, as far as we are able to determine, in the laws of all civilized communities. It lies at the foundation of every religious faith, and may be said to be one of the corner stones of the Christian religion. It is vitally essential to the administration of justice, and a careful search of our Statutes fails to reveal that it was ever modified or abrogated. It therefore exists at the present day in Wisconsin, with all the force which it possessed throughout the ages, and this court, in holding as it does in this opinion, does not entrench upon the legislative field, but, on the contrary, its holding is in harmony with the spirit and

intent of the Legislature. *No system of laws permits a criminal to profit by his own crime, for, if this were so, the very object of all law would be subverted.*"

In *Harris* v. *Harris et al.*, 93 So. Rep. 841, 844 (S. C. Ala. 1922), it was said:

> "To deny relief in these circumstances would allow the maxim to work injustice and wrong (21 C. J. 187, sec. 172)—to the extent, at least, the execution of the agreement exceeded the purpose of complainant—and given countenance to the morally reprehensible arrangement between defendant and the proponent legatees *would result in still greater offense to morals, good conscience, and public policy.*"

The following statement, found in *Boston & Worcester R. R. Corp.* v. *Dana*, 67 Mass. Rep. 83, 99 (1854), is also pertinent:

> "Nor can it contribute to the purity of the administration of justice, or tend to promote private morality, to suffer a party to set up and maintain in a court of law a defense founded solely upon his own criminal act."

The decision of the Court of Appeals of the Seventh Circuit in *Feist, Inc.* v. *Young*, 138 Fed. (2nd) 972, is precisely in point. There the Court, in holding that plaintiff was not guilty of unclean hands by failure to comply with the Wisconsin statute relating to copyrights, stated (pp. 974, 975):

> "By refusing to grant plaintiff's prayer, the District Court not only deprived plaintiff of its copyright, but in effect gave judicial blessing to defendant's confiscation of it. Since equity seeks above all else to do justice, we cannot agree that a court should supinely sit by while such unlawful appropriation occurs.
>
> . . . . . .

"In our view, a rule of equity should never be applied if its application results in injustice, which would result here if plaintiff were not allowed to enforce its congressionally bestowed right to prevent unauthorized use of its copyright. True, plaintiff failed to comply with the Wisconsin statute. But the rule is not inexorable that a plaintiff who comes into court with unclean hands is always to be denied relief, regardless of other circumstances in the case; for, if the defendant has been guilty of conduct more unconscionable and unworthy than that of the plaintiff, the rule may be relaxed. *Goodyear Tire & Rubber Co.* v. *Overman Cushion Tire Co.*, 95 F. 2d 978, 983."

The courts of Illinois are in accord with the foregoing rule of law. In *Woodall* v. *Peden et al.*, 274 Ill. Rep. 301, 306 (1916), the Supreme Court, in reversing the lower court, said:

"If, however, the parties are not in pari delicto, equity may give relief to the one that is comparatively innocent. The court does not so much concern itself with the fortunes of the parties, or either of them, as it does with public policy that such contracts shall not be made and that no one shall take any advantage from the making of them, provided the conduct of either has been such as to receive consideration. The court will allow the remedy, not for the sake of the party who makes the objection but on grounds of public policy. (Pomeroy's Eq. Jr. secs. 402, 929.) *The evidence justifies a belief that the complainant, who was protesting his innocence, submitted to the demands of his wife quite unwillingly and was comparatively without fault."*

Further, in *Kapalos et al.* v. *Ganas et al.*, 242 Ill. App. 302, 306-7 (1926), the doctrine was fully stated as follows:

"It is a maxim of equity 'that he who comes into equity must come with clean hands' and where complainant does not come into equity with clean hands

he will be given no relief. *This rule of equity, however, has its limitations and does not apply to every unconscientious act or inequitable conduct on the part of a complainant. It will not always be applied where the parties are not in pari delicto.* This principal is founded mainly upon motives of public policy and in such case 'the court may give relief against the improper transaction, or may even enforce the obligation arising from the tainted agreement, at the suit of one of the parties thereto • • •. *Assuming that a contract is fraudulent or against public policy, or illegal, still, where the parties to it are not in pari delicto, and where public policy is considered as advanced by allowing either, or at least the most excusable of the two, to sue for relief, relief may be given to him, either against the transaction by setting it aside and restoring him to his original position, or even, in some cases, by enforcing the contract, if executory.*' Section 403, 1 Pomeroy on Equity Jurisprudence (4th Ed.). So in the instant case we are of the opinion that while the complainants were parties to the scheme agreed upon for the pretended foreclosure of the chattel mortgage, yet we are clearly of the opinion that complainants are the most excusable; that the scheme was originated by the defendant, Ganas, and the court found that the other defendants were also involved. *It would certainly be a harsh rule that would deny relief to complainants in the instant case where such rule would permit the defendants to obtain benefits from the most glaring fraud.*"

THE CONDUCT CHARGED TO CONSTITUTE UNCLEAN HANDS DOES NOT RELATE TO THE SUBJECT MATTER IN ISSUE.

It is the rule of this Court that conduct charged to constitute unclean hands must have been in regard to the subject matter in litigation and must have affected the equitable rights between the parties to the litigation. In

Keystone Driller Co. v. *General Excavator Co.*, 290 U. S. 240, 245, the rule is stated as follows:

> "But courts of equity do not make the quality of suitors the test. *They apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation. They do not close their doors because of plaintiff's misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication.* Story, *id.*, § 100. Pomeroy, *id.*, § 399. They apply the maxim, not by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right and justice."

The Court of Appeals for the Seventh Circuit applied the same rule in *Feist, Inc.* v. *Young*, 138 Fed. (2nd) 972, 975, 976, stating:

> "The authorities cited by the District Court are not controlling here because the conduct of the plaintiff in them was fraudulent and directly connected with the issues being litigated, whereas here plaintiff has not been guilty of any inequity, unconscionable act, or wrongdoing towards the defendant. Neither has it misrepresented its musical work, which forms the basis of this action, or the copyright thereof, either to the defendant or to the public.
>
> * * * * *
>
> "The Wisconsin statute is not to be interpreted as precluding enforcement of rights bestowed by federal law in the federal court. This is not to say that plaintiff may not be held responsible to the State of Wisconsin for violation of its duly enacted statute. *But the statute is not relevant or material to the issue as presented by the complaint.* The complaint charges

infringement, and since infringement is admitted, relief should be granted.

• • • • • •

"So here, plaintiff's failure to secure a license was an offense against Wisconsin of which it alone could take cognizance; *and plaintiff's dereliction in this regard in no wise prejudiced the defendant or justified him in confiscating plaintiff's property. We think the clean hands maxim should be applied only where it promotes right and justice, not by way of punishment for extraneous transgressions.* See *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, 245 [19 U. S. P. Q. 228, 230]; *Ohio Oil Co.* v. *Sharp*, 135 F. 2d 303, 307; *Chicago* v. *Union Stock Yards and Transit Co.*, 164 Ill. 224, 238."

The question of unclean hands is a matter for the application of local law (*Erie* v. *Tompkins*, 304 U. S. 64, *Ford* v. *Caspers*, (C. C. A. 7) 128 Fed. (2d) 884). The Illinois Courts follow the rule of this Court, as stated in *Carpenters' Union* v. *Citizens Committee*, 333 Ill. 225, 249-50 (1928):

"• • • The relation of the defendants to the alleged misconduct of the complainants was not different from the relation to it of the public generally. The complainants' acts of misconduct may have been violations of the criminal law, which might have been punished by public prosecution, but a court of equity has no power to punish the complainants for them by refusing to consider their complaints of other disconnected wrongs done to them by the persons affected by their criminal acts or of any wrongs done to them by other persons not directly affected by such criminal acts. *The rule that a complainant must come into equity with clean hands means that he must do equity as respects the defendant's rights in the particular matter of the suit.* (1 Pomeroy's Eq. Jur. sec. 307.) The rule does not go so far as to prohibit a court of equity from giving its aid to a bad or a faithless man or a

criminal. *The dirt upon his hands must be his bad conduct in the transaction complained of. If he is not guilty of inequitable conduct toward the defendant in that transaction his hands are as clean as the court can require.* (*Ansley* v. *Wilson*, 50 Ga. 421.) The acts of the defendants interfered with and injured the complainants in the enjoyment of their constitutional rights, and so far as the complainants were concerned no acts of theirs in any way affected any lawful right of such defendants as were not directly interested in the subject matter of the original controversy between the Associated Builders and the Building Construction Employers' Association on the one hand and the Carpenters' Union on the other."

The basis of the District Court's holding of unclean hands in the instant case was the failure of respondent and its attorneys to inform the authorities of their suspicions concerning Larson's perjury. It is manifest that, under the foregoing decisions, such failure bears no relation whatever to the issues of validity and infringement of the patents or to the issues of validity and breach of the contracts. The District Court made no finding that there was an agreement to conceal Larson's perjury, or not to inform the authorities. The Court of Appeals expressly found that "there is no merit in this contention" (R. 1222-23) that such an agreement existed. An agreement to conceal or suppress evidence of Larson's perjury must have existed in order to relate respondent's silence to the subject matter in issue.

With respect to the contract issues, how can it be said that the silence of respondent and its attorneys affects the petitioners' agreements to concede priority, or the right to make up six thousand wrenches, or the releases given, or the transfer of the Larson application as a substitute for actual payment of royalties and for the release, or the obligations on the part of petitioners not to infringe and not

to contest validity? Were respondent's rights under the contracts enhanced in any way by the silence? The answers must necessarily be in the negative. In fact, the only ones who have benefited under the contracts are petitioners, who now seek through their own sins to prevent respondent from obtaining any benefit thereunder.

As to the patent issues, the silence of respondent and its attorneys is clearly irrelevant. The silence in no way related to any act or thing going to the validity of the patents or to the question of infringement. Since Zimmerman was the prior inventor of the interference subject matter and, therefore, entitled to the patents thereon, and the Larson patent issued on an addition which Larson did invent, the undisclosed evidence of Larson's perjury has nothing to do with the validity of those patents. Further, the question of infringement involves only the interpretation and application of the patent claims to the accused structure and is unrelated to the respondent's silence. Respondent, therefore, by its silence, gained no advantage over petitioners or the public generally with respect to the Zimmerman or Larson patents.

A fair inference from the trial court's findings is that, if respondent and its attorneys, either after securing the Thomasma affidavit or entering into the contracts of December 20, 1940, had informed the authorities of their suspicion of Larson's perjury, respondent's causes of action would not have been infected with unclean hands. This in itself emphasizes that respondents alleged misconduct "has no immediate and necessary relation"—quoting from the *Keystone* case—to the present issues in suit.

This Court had an entirely different set of facts before it in applying the above-quoted rule in the *Keystone Driller* case, 290 U. S. 240. In that case there was a direct relationship of the alleged misconduct to the issues because the

plaintiff had brought up and concealed prior use evidence as to one of the patents in suit. The patents had been found valid and infringed in a prior suit, and, in the subsequent suit, which came before this Court, plaintiffs were making use of the decree and opinion of the court in the prior suit and thus were attempting to perpetuate upon the Court a fraud which had been perpetrated upon the first court. In the instant case, as we have already shown, the situation is in no way comparable.

A well established corollary rule is that where the alleged misconduct arose after the transaction, it stands in an unrelated position. An Illinois case directly supporting this view is *Fagan* v. *Rootberg*, 320 Ill. 586, 596, (1926), wherein the Court said:

> "In this case we have seen that the contract was understandingly and fairly entered into, and, so far as anything is shown by the evidence, is a fair contract in all particulars [admittedly so in the instant case]. Under its terms, leasing or occupancy of the various apartments could be had only with the approval of the vendees. The attempt to lease to Reback the apartment desired by the vendees did not meet with their approval. No rights or liabilities therefore arose concerning such attempted lease that in any way affected the vendors or the contract of sale. By reason of the right of the vendors to have the rental of the premises up to May 1, 1923, the occupancy of this apartment by the vendees was to the vendors' advantage rather than their detriment. The act of the appellants in nowise affected the rights of the Rootbergs under the contract or depreciated in value the thing they were to receive thereunder. Moreover, the bill in nowise rests on any advantage secured to the appellants by taking possession of the apartment. Such possession, though it be conceded to be wrongful, in nowise affected the equitable rights or relations of the parties under the contract. The maxim contended for does not apply."

CONCLUSION.

It is respectfully submitted that the decision of the Court of Appeals should be affirmed, inasmuch as it correctly appraises the factual situation substantially in consonance with the District Court's strict fact findings, materially disagreeing only in its conclusion drawn from the facts, and so does not run counter to the Rule 52 in any respect. Its ruling on credibility accords with that of the District Court whose Memorandum, filed with the findings of fact and conclusions of law, has not been improperly given effect on this subject or any other as by contravening any fact finding, but has simply been accepted by the Court of Appeals as ruling the question of credibility. Aside from this, the irreconciliability in point has no relation to the one issue upon which the case turned below, to wit, that of whether respondent's hands became unclean by reason of silence. We should not suppose that other issues would be reviewable, especially those raised by the petitioner Snap-On as to validity of the contracts considering that its complaint was dismissed and it took no appeal. However, we have endeavored to deal with all issues to which the evidence of record pertains, and we submit that on each and every such issue respondent is entitled to prevail.

Respectfully submitted,

FRANK PARKER DAVIS,
Attorney for Respondent.

ALBERT J. SMITH,
Of Counsel for Respondent.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944.

NO. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON and SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY CO.,

Respondent.

PETITION FOR REHEARING, OR REFORMATION OF OPINION.

FRANK PARKER DAVIS,
Attorney for Respondent.

ALBERT J. SMITH,
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THE TWENTIETH CENTURY PRESS, INC., CHICAGO

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Now comes respondent and petitions for a rehearing or, in the alternative, for a reformation of the majority opinion with respect to a number of erroneous factual statements therein which underlie the conclusions and most gravely reflect upon Automotive and its attorney.

Preliminarily we observe that the opinion is based upon the proposition that the Larson application itself was of "fraudulent ancestry", and that it was against the public interest for Automotive to acquire and prosecute it to patent when not reporting to the Patent Office the suspected perjury in the interference in which the application

had been involved, or how Thomasma figured in the inception and development of the new wrench."

This quite overlooks the fact that the application *as filed did not claim the invention which was the subject of the interference*, nor anything else that was Zimmerman's—and that, when priority as to *that* invention had been conceded to Automotive's inventor and the application was assigned to Automotive, the interference claims were promptly cancelled and continuing prosecution pertained to Larson's true invention of a distinct though narrow *improvement upon the then concededly prior invention of Automotive's inventor*, Zimmerman.

None of the defendants ever pleaded *fraud* or *unclean hands* in the *filing* of the Larson application or in Automotive's *prosecution* of it, on the ground that Larson was not the inventor of what was claimed originally therein or what was claimed in the patent as issued, though Snap-On had pleaded, "on information and belief" that the invention "was acquired" by Larson from Thomasma and also that it was their "joint contribution" (R. 21).

The original application and claims were not even before the District Court when its Findings of Fact and Conclusions of Law were entered June 12, 1943. A certified copy came in as Plaintiff's Exhibit 64 by stipulation of August 6, 1943 (R. p. 913). Naturally no Finding on the subject was proffered and the District Court made none. Defendants did urge *on appeal* that the Larson application should have been filed jointly by Larson and Thomasma, but the Court of Appeals declared "This record does not warrant such conclusion * * *" (R. 1223).

"At page 2 the opinion reads as though the interference claims were in the Larson application as filed which is not the fact. They were suggested to Larson by the Patent Office when his application had been pending for some considerable time. They came from Zimmerman's prior applications.

Such being the situation the factual errors of the majority opinion with which we shall deal have mainly to do with the status of the Larson application as filed and the genesis of the wrench disclosed therein and its development at the hands of Larson and Thomasma.

We shall show by the record that the application was properly filed in Larson's name and contained no fraudulent claims whatever, and that its prosecution at the hands of Automotive pertained to the invention *that was justifiably claimed in the application as filed*, so that nothing whatever occurred inimical to the public interests as a result of its being "turned into a patent," to use the Court's expression.

[1] At page 2 of the printed opinion we find this erroneous statement concerning collaboration of Thomasma and Larson:

> "Together they worked out plans for a new wrench, although Thomasma claimed that it was *entirely* his own idea."*

Not even defendants ever contended that Thomasma so claimed. Then on the last page of the printed opinion we note the phrase used in reference to the Larson application,—"the application's fraudulent ancestry," which we interpret as reflecting the Court's conclusion that Larson had no standing at all as a legitimate applicant for a patent upon the torque wrench disclosed in that application.

This apparently derives from testimony of Thomasma *at trial* (R. 323) where, on examination by defendants' counsel, he spoke as follows:

> "Q. You did tell Mr. Fidler on November 7, 1940 that you were responsible for the subject matter of

*Emphasis ours here as elsewhere in quoted matter unless otherwise indicated.

the Larson Application, is that correct, that you were the inventor of whatever had been done you done?

A. I conceived the idea, if that is what you mean?

Q. You were the *father* of the idea?

A. It was my conception."

Assuming that "father of the idea" means more than a mere suggestion that a wrench be invented, it is impossible to understand how Automotive can be charged with knowledge in 1940, or 1941, or 1942 for that matter, of what Thomasma or anybody else would later say at the trial in May, 1943. Automotive and its attorney inevitably must be judged only on the information they actually had at the time the settlement was made in December, 1940. It is to be borne in mind that not only Automotive and its attorney but Snap-On and Alberts at the time of the settlement considered the Larson application, aside from the interference counts, later cancelled, to be directed to the sole invention of Larson. Snap-On and Alberts made no contention to the contrary and, indeed, nothing occurred thereafter to warrant a contrary belief. The application was assigned to Automotive on the assumption that it was based upon Larson's sole invention.

What is said in the majority opinion, at printed page 3, as to Thomasma's having "stated that he developed Larson's wrench and that Larson's patent application was a 'frame-up'," is evidently derived from Mr. Wacker's letter to Mr. Fidler (Defendant's Exhibit 11, R. p. 924) reporting upon the interview of November 3, 1940 with Thomasma and his attorney Krichever who were endeavoring to sell Thomasma's stock in Precision to Automotive.

Why this should be accorded any particular evidential value we fail to see because shortly after this Thomasma swore to facts showing that Larson had very much to do

"on his own" with the development of the wrench, as we shall presently show by quotations from the Thomasma affidavit which occupies pages 952 to 1012, Vol. II, of the record.

In the course of that sworn statement of what he told Fidler he certainly did *not* claim that the "new wrench . . . was *entirely* his own idea." On the contrary, he accredited *Larson* with having contributed *most of what went into that wrench.*

We quote a number of passages from the Thomasma affidavit telling of his first talk with Larson. He said:

> "I think all I had to show was a socket and a piece of drill rod and a socket wrench handle." (R. 962).

These were simply pieces he brought from the Automotive factory. He then stated:

> "I suggested that we put a dial mechanism *of some sort* on there to measure the amount that this rod would bend. From my description, he then saw the picture of what I meant. He made the pattern *on his own* for the first casting and from there on we worked together *on the machining* of it and the *machining* of parts" (R. 962-3).

And further:

> "Q. Did you see Larson make those first patterns?
>
> A. I didn't see him make them. *He made them on his own.* I did see the patterns when they were finished" (R. 963).

This is important because it concerns the development of a very essential part of the wrench, to wit, a slide and swivel bearing *intermediate the ends of the tension rod,* and it is perfectly clear from what Thomasma related in his affidavit that this was a matter left entirely to Larson. For exam-

ple, Thomasma answered Fidler's questions as follows (R. 977):

"Q. Did you have any idea of how you would support it so that it would be free to pivot and slide?

A. Yes, I had in mind that it would slip through a hole in a bearing *of some sort* that would support it.

Q. You didn't have in mind any particular kind of bearing at that time?

A. *Nothing definite.*"

Another contribution of Larson's, and the one which brought the wrench to satisfactory condition, was the so-called "tail piece," in the form of a reduced extension of the tension rod, constituting the vital element in the connection of the free end of the tension rod with the indicator. We may say that throughout this case it has been *conceded that this was conceived of by Larson and by no one else.*

At this point we quote further passages from the Thomasma affidavit, concerning how far he had gotten when he went to Larson:

"Q. You didn't have a *complete* wrench in any sense of the word at that time?

A. *Only the idea that I had something to work on*" (R. 978).

Just previously in that affidavit he was asked and answered Mr. Fidler's questions as follows:

"Q. Did you know at that time what kind of gauge structure you would use?

A. *I wasn't definite about gauge structure.*

Q. Did you have any idea where to locate the gauge structure?

A. As near to the handle as you could possibly put it.

Q. Could you still connect it the same way that AMMCO did?

A. No, on account of theirs being connected in the center of the wrench and to put it at the end you would have to have some other means of hooking it up to get the movement.

Q. Had you worked out anything like that at the time you first told Larson about it?

A. *Nothing definite,* although I had given some thought to it. *I hadn't worked anything definite out.*"

All of these things were worked out by Larson, as the record clearly shows. In fact, the only things that Thomasma told Fidler were his, Thomasma's, own ideas were the putting of the indicator "on the case instead of on the cover," locating it "as near to the handle as possible so that it could be seen" (R. 969), and fitting the spring bar directly into the head member (R. 1007).

All of this was very far from conception of a complete wrench structure, and upon Thomasma's own sworn statement, *Larson* was the one who carried through to completion and successful form "on his own" the wrench structure upon which the patent application was founded.

Let us see then what Thomasma said in his affidavit, about the filing of the application (R. 1002-3):

"Q. That particular improvement that was covered by the application, whose improvement was that? Who made the suggestion respecting the reduced end piece connecting with the gauge?

A. *Larson made that.*

Q. Therefore, it was proper for the application to be filed in his name?

A. That's right.

Q. Suppose that the application was to have covered just the idea of the head piece and the straight spring bar, one end fixed to the head piece and the other end connected to the casing by a swivel in which the spring bar would slide, in whose name should such an application as that have been filed?

A. Really, that should have been filed in my name.

Q. It is *because of the end of the spring bar being fitted directly into the head member*—

A. That was my idea.

Q. Suppose that application had covered merely the idea of a rotatable head member in the casing and a spring bar connected at one end to that head member in some way through a forging or any other way, broadly, with a swivel at the other end and the spring bar sliding in it, in whose name should that application be filed?

A. That, in my opinion, would be the property of the *Automotive Maintenance Machinery Co., and Zimmerman, as engineer, would be the inventor of the same.*

Q. Then, in your mind, it was *perfectly proper for Larson to file the application in his name* if he limited it to that improvement that they had decided was patentable?

A. That's right."

Without further reference to the record, the foregoing is enough to demonstrate the error of the first above quoted statement in the majority opinion as to Thomasma's having "claimed that it was *entirely* his own idea." Thomasma's own affidavit which was introduced in evidence by the *defendants* runs quite to the contrary, as the quotations we have made from that affidavit definitely demonstrate.

And let it be remembered here that defendants took the position before this Court,—not that the new wrench was "entirely" Thomasma's "own idea," but that Larson and Thomasma were joint inventors, stating in their brief, at p. 47, "if there was invention it was the ...t invention of Larson and Thomasma."

We shall next refer to the testimony of Alberts ...o prepared and filed the Larson application. While the record does not show that he then knew anything about Thomasma's part in the project of devising a new wrench or in developing the same, he, Larson, testified at trial in reference to a letter which he had written to Thomasma's attorney, Krichiver, as follows (R. 465):

> "Q. What was the occasion of writing this letter?
>
> A. The purpose of that letter was precisely what I have testified to a moment ago, that as far as up to that time, January 31, 1941, which was prior to the date that Thomasma testified on adverse, which was prior to the time he testified in this court, and the only knowledge I had was the *knowledge he had given on November 28, 1940* in response to the questions of Mr. Fidler*, and then *he acknowledged that the greater part of the work on that wrench was done by Larson;* that *Larson's idea* was to place the indicator in the handle end of the wrench, put an extension on the flexible beam to translate the flex of the beam to such an extent that a more accurate performance could be acquired in taking measurements or viewing the indicator to register those measurements; that that part of the wrench was his invention.

Thus it appears that after Alberts had been fully informed concerning all claims made by Thomasma as to his part in the project, as related in the Thomasma affidavit

*This was when Thomasma told his story in the presence of Alberts and Snap-On's president Johnson and Fidler and Wacker.

and repeated by Thomasma in the presence of Alberts, he: Alberts, was of the opinion that the application *was properly filed in Larson's name* and he, be it remembered, was a witness testifying on behalf of the *defendants* and had been *attorney for Larson and Precision and Snap-On.*

It should here be observed that all of the claims which Alberts put into the Larson application as filed pertained to the so-called "tail piece" feature, which was concededly Larson's contribution. This feature involved means connecting an extremity of the spring beam with means for indicating the pressure applied. Claims 1 to 5, 7 and 8 of Larson's original application are directed broadly to this feature. For example, claim 1 defined this featur "calibrated indicating means *operatively connected t. an extremity of said resisting beam* to measure the flex of said torque resisting beam," while claims 2 to 5, 7 and 8 define it in equivalent language, such as "calibrated indicating means operatively connected to the free extremity of said beam" (claim 3). The tail piece is a vital element of these connections and any proper interpretation of these claims must include it, though not necessarily limiting them to its being an individual piece. The specification states that it may take the form of a reduced integral extension of the beam (R. 1152; spec. p. 2, col. 2, ll. 2-14). The remaining and more specific original claims do define this feature as "a smaller rod projecting from the free extremity of said elongated rod [spring beam]." Certainly there was no "fraudulent ancestry" as to any of these original claims.

We shall deal later on with the claims which appear in the Larson patent and show that there is nothing whatever of "fraudulent ancestry" about them either.

We pause to remark that where two or more individuals collaborate in the development of an idea, a difficult question

often presents itself as to whether one or another or two or more jointly should apply for patent. In the instant case a joint application by Larson and Thomasma might have been justified, since Larson carried along some of Thomasma's ideas. On the other hand the claimed *combinations* were of Larson's invention and it was his own contributions which made the wrench operative and successful. Certainly upon the facts as revealed by the record an application in Thomasma's name alone would have been improper, for it is perfectly clear that he came to Larson with only an embryonic incomplete idea and that by far the major portion of the work of development was done by Larson in embodiment of his own ideas.

Wherefore, we think that Alberts was quite justified in taking the position he did at trial as to the application having properly been filed in Larson's name alone.

It follows that the censure of Automotive and its attorney, as in the majority opinion of this Court, is wholly unwarranted on the basis of any "fraudulent ancestry" of the Larson application. Neither Automotive nor its attorney had reason to disbelieve in Larson's parentage at the time of Automotive's acquiring the application or at any time thereafter.

Let us now consider the apparently aspersive statement in the majority opinion that "Automotive then made numerous changes and expansions as to the claims in the application and eventually secured a patent on it," and see just what was done and whether any of the claims of the patent transcend what was properly claimable as the invention of Larson.

There certainly can be no question as to claims 4, 6 to 12, inclusive, 15 to 17, inclusive, and 22 to 25 inclusive, for each of them specifies Larson's conceded contribution of the

tail-piece termed "a smaller rod" in some of these claims and "an extension" in others. Claim 13 does also in its final clause, and the same element is embraced in the final clauses of claims 14, and 18 to 21, inclusive, and claims 27 to 32. The "numerous changes and expansions" did not broaden the scope of the original claims, nor did any one of the claims which issued define other than that which was attributable to Larson's work.

Claim 26 of the Larson patent does bring into prominence a feature asserted by Thomasma to have been proposed by him, to wit, the putting of the indicator "on the case instead of on the cover," but still it was Larson who worked out the claimed combination. The bare idea of transferring the indicator represented no *inventive* contribution to that combination, and it was Larson and not Thomasma who contrived the necessary co-relation of case or "elongated body member," "head member," "yieldable-torque resisting beam," "indicating means," and "detachable cover plate," whereby to create a satisfactory wrench, one with the indicator accurately "operable upon relative rotation of said rotatable members." Larson's conceded contribution of the tail-piece was the thing chiefly responsible for achievement of that result.

Moreover, Larson contributed the idea of eliminating the bearing in the cover and having the case alone supply a bearing in which the head was journaled. We quote from Larson's deposition in the interference proceedings (Defendant's Exhibit 10, p. 48):

> "A. I eliminated the bearings, top and bottom on the head member and put the bearing entirely in the case so that the cover had nothing to do with the operation, or bearing on the head at all. The tool worked the same with or without the cover.

Q. 305. You mean in the cover plate?

A. The cover plate, yes, sir."

Thomasma's idea was to have bearings for the head in both cover and case, as in the AMMCO wrench (R. 980-81).

Claim 26 should be construed as extending to Larson's contribution of the single bearing in the case which provided for removal of the cover "without disturbing the operative relationship of the wrench parts" as the claim recites.

In conclusion on this topic, we maintain that Fidler's prosecution of the Larson application was entirely proper, the "numerous changes and expansions as to the claims" having been fully warranted upon the basis of what had been originally claimed.

We are not at all unmindful of the Court's emphasis on Automotive's prosecution of the Larson application "without ever attempting to reveal to the Patent Office or to anyone else the facts it possessed concerning the application's fraudulent ancestry." We have shown from the record that it had no "fraudulent ancestry."

The only fraud concerned with it was that practiced by Larson in falsely swearing to his inventorship of *Zimmerman's* claims suggested to him by the Patent Office, and the perjured testimony by which he sought to antedate Zimmerman. It was enough for the Patent Office that he conceded priority to Zimmerman. He did not thereby disentitle himself to patent his own invention of an improvement over Zimmerman. The status of his applicaton in *that* regard would not have been affected at all by the Patent Office having knowledge of the fraud. There was, therefore, no reason why the Patent Office should have been informed about it.

Fidler had taken counsel with a prominent patent lawyer of Washington, D. C., on the matter of informing the Patent Office about it before the concession of priority was made, and was advised against it and for very good reasons (R. p. 760). The point is that the continuing prosecution of the application, absent the false claims, would not have been barred in any way by the perjury concerned solely with those claims.

Then it would have been irregular, under Patent Office practice, for consideration to be given *ex parte* to the subject of inventorship as related to Thomasma's participation in the inception and development of the wrench upon which Automotive's solicitor was prosecuting claims for the improvements over Zimmerman. Automotive had set out to introduce proofs in the interference in the hope of showing fraud in the evidence Larson had produced but there was no longer any occasion to do that when Larson had conceded priority to Zimmerman.

The Patent Office does not concern itself with reasons for a concession of priority in an interference proceeding. Knowledge of its having been done because of falsity of proofs of inventorship of the *interference subject matter* would not have changed the situation one whit as to continuing prosecution of the application by Larson or an assignee confined to what lay outside of the interference issue, and so was unaffected by the concession.

Automotive's patent solicitor took up the prosecution of the application, and properly did so, entertaining the very same view voiced by Alberts at trial, viz., that the application had been justifiably filed in Larson's name alone. Opinions might differ as to that but the *judgment* of Alberts and Fidler was that a *sole* and not a joint invention was being claimed. Even if that *judgment* was wrong, no criminality about it could justly be found.

Being satisfied that the application had been properly filed in Larson's name, and that resumption of its prosecution to patent upon the improvement which was in fact his invention, we are quite unable to see how a duty rested upon Automotive, as assignee, to report to the Patent Office either the facts of Larson's fraudulent claim to Zimmerman's invention or the facts of Thomasma's participation in the development of the wrench.

The majority opinion, in item 1 of its conclusions, p. 9, appears to confuse these matters, creating the impression that respondent seeks to excuse performance of an "uncompromising duty" to report to the Patent Office the fraud as to the interference subject matter, on the score of reasonable doubts about sufficiency of the proof. *But that has nothing to do with prosecution of the Larson application as confined to that of which he was the rightful inventor.* So why burden the Patent Office with consideration of proofs concerning an interference issue already disposed of by concession of priority? It would have been a perfectly idle ceremony for the Patent Office to "pass upon the sufficiency of the evidence."

Is it to be wondered at that we cannot reconcile ourselves to Automotive and its attorney having been found by this Court to have done wrong in acquiring the Larson application and prosecuting it,—not for anything that Larson had falsely claimed as his which belonged to Zimmerman, but for what was developed by Larson himself in furtherance of an incomplete idea submitted by Thomasma?

Let it be assumed, if the Court please, that Fidler and Alberts as well, were wrong in their *judgment* that Larson was entitled to claim to the full extent as in the original claims, or in the claims of the patent as issued, because some certain claim or claims may have expressed what

was the joint invention of Larson and Thomasma, can it be that a finding of felonious intent is predicable upon such mistake of *judgment?* Yet there it is in the majority opinion where it reads, immediately following the phrase "fraudulent ancestry",—"Automotive thus acted to compound and accentuate the effects of Larson's perjury"!

There was no perjury in the filing of the Larson application and how, may we ask, could Automotive be compounding the perjury that had been committed by Larson, *et al.* in the interference, by prosecuting the Larson application *absent entirely the perjured claims?* How does one compound or accentuate a perjury by acting without any relation to it and deriving nothing whatever by reason of any concealment of knowledge of it?

The Patent Office ignorance of the perjury had nothing to do with the granting of the Larson patent. The Patent Office would have no right to refuse a patent for Larson's improvement over Zimmerman, on the ground that Larson had once falsely claimed Zimmerman's invention. The granting of the Larson patent could have no effect to class the Patent Office or the public "among the 'mute and helpless victims of deception and fraud'."

[2] At several places in the majority opinion the patents in suit are referred to in the plural as though *all* were affected by Larson's perjury. For example, at printed page 8 of the opinion we find this statement:

> "The history of the patents and contracts in issue is steeped in perjury and undisclosed knowledge of perjury."

Since there was no perjury in connection with the Zimmerman inventions or the applications for patents thereon

or the prosecution of those applications or the issuance of Zimmerman patents, we fail to see how the latter can be "steeped in perjury and undisclosed knowledge of perjury", or affected in any way by Larson's perjury in seeking to antedate Zimmerman's invention, or how it can be that these Zimmerman patents are affected by any "undisclosed knowledge of perjury".

In the same paragraph of the opinion it is stated that Automotive "acquired the Larson application itself, turned it into a patent and barred the other parties from ever questioning its validity". We have already reviewed the proceedings had in the Patent Office after Automotive acquired the Larson application and have demonstrated that it was not "turned into a patent" in any way connected with or influenced or aided by the perjured Larson proofs in the interference, so that lack of knowledge by the Patent Office of the perjury had nothing whatever to do with the result of the prosecution of the application at the hands of Automotive.

How there could be anything iniquitous or non-conformative with "minimum ethical standards" in defendants' being committed to the validity of Larson's patent, we fail to comprehend, considering that as assignors they would be legally estopped in that regard.

[3] We next comment upon another erroneous statement in the same paragraph of the opinion reading:

> "Larson's application was *admittedly* based upon false data which destroyed whatever just claim it might otherwise have had to the status of a patent."

We would be much interested to be informed of how or when or where in the record any such admission by plaintiff or any of its representatives is to be found. We have

already shown by the record that the application was *not* based upon false data, and there certainly never has been any admission of any kind by Automotive that it was. On the contrary Automotive has all along contended, and was supported in that contention by the Court of Appeals of the Seventh Circuit, that *as filed* the application was properly made in Larson's name. Further, as pointed out hereinbefore, that was the view expressed by defendants' attorney Alberts when testifying at trial.

We surmise that the "false data" referred to is that which had to do with claims which were adopted by Larson at the suggestion of the Patent Office for purposes of interference,—these being claims taken from the applications of Zimmerman. How this could operate retrospectively to invalidate the application altogether, transcends our understanding. With those false claims stricken from the Larson application, there was left properly claimable subject matter *of Larson's own invention* as an improvement over Zimmerman, and the application was prosecuted at the hands of Automotive *strictly upon that basis.* Therefore, we quite fail to see how "whatever just claim" the application had to the status of a patent upon *that* improvement could be destroyed by the mere fact that claims to something else were false and had been relinquished. Neither can we see how Automotive acted "in disregard of the public interest" in taking the patent upon what truly was Larson's invention.

[4] Pursuing the same subject, we find this sentence in the opinion, beginning at the bottom of printed page 8:

> "The important fact is that Automotive had every reason to believe and did believe that Larson's application was fraudulent and his statements perjured."

There is nothing of record to show that Automotive entertained any such belief as to the Larson application *in toto*

but, on the contrary, it was believed to be a proper enough application *insofar as it covered Larson's invention as an improvement upon Zimmerman.* The belief as to "his statements" being "perjured" had solely to do with his false claim to the Zimmerman invention. Automotive did not, therefore, act in "complete disregard" of any belief that Larson's application itself was fraudulent.

We also respectfully challenge the Court's statement that

> "Automotive knew of and suspected the perjury and failed to act so as to uproot it and destroy its effects."

We have shown that the "perjury" referred to had nothing to do with the Larson application as filed. The "perjury" pertained to the interference counts, and certainly that perjury was uprooted and its effects destroyed most effectively by cancelling the interference claims from the Larson application, and confining continued prosecution to claims for Larson's own invention.

[5] Since the majority opinion finds it unnecessary to "speculate as to whether there was sufficient proof to present the matter to the District Attorney;" we need not dwell upon the fact that Automotive refrained from presenting the matter to the District Attorney on the advice of the two different attorneys whom Mr. Fidler consulted. But, noting the statement at page 10 of the majority opinion with reference to reprehensible actions of Larson and Precision, we are moved to comment that the net result of the litigation is to reward them and Snap-On Corporation by permitting them to profit by the perjury in their own ranks. Thus the attempt having failed to rob Automotive of the Zimmerman invention upon which it had built up a substantial business in the sale of wrenches to

Snap-On Corporation, and the contracts of settlement having been made whereunder Automotive's patent rights were to be respected, defendants were found to be continuing the manufacture and sale of wrenches which Automotive believed to be infringements of the patents and in violation of the contracts. Suit having been brought upon that basis, defendants, by way of thwarting Automotive's enforcement of its rights, had recourse to capitalizing upon perjury in their own ranks and have now succeeded in accomplishing their nefarious purpose by that devious method.

Of course we concur in the equitable principles set forth in the majority opinion. That to which we take exception is the *factual* basis of the opinion for application of those principles, which basis we believe we have shown to be distinctly erroneous.

Consequently, we consider the conclusion unjustified that Automotive's patent claims were "infected with fraud . . . too great to be overridden" by the "more reprehensible" actions of Larson and Precision. And we most certainly fail to perceive how "Automotive acted affirmatively to magnify and increase those effects", i.e., the effects of suspected perjury.

Automotive did "act so as to uproot it and destroy its effects", not only by cancelling the false claims from Larson's application, but promptly upon Larson's admitting the perjury on pre-trial examination before the District Court, by suggesting to that court a reference to the District Attorney (R. 118).

We submit in conclusion that the true facts of the case as shown by the record are not such as to support the conclusions of the majority opinion which so seriously reflect

upon the reputation of Automotive and its attorney, and that whatever comes of this present petition, common justice cries out at least for rectification of the damaging factual statements of the majority opinion which we have shown to be erroneous.

Respectfully submitted,

FRANK PARKER DAVIS,
Attorney for Plaintiff.

ALBERT J. SMITH,
Of Counsel.

I hereby certify that the foregoing Petition is presented in good faith and not for delay.

FRANK PARKER DAVIS.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944.

No. 377

PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON and SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY CO.,

Respondent.

PETITION FOR CLARIFICATION OF THE OPINION.

FRANK PARKER DAVIS,
Attorney for Respondent.

ALBERT J. SMITH,
Of Counsel for Respondent.

THE TWENTIETH CENTURY PRESS, INC., CHICAGO

IN THE

Supreme Court of the United States

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vs.

AUTOMOTIVE MAINTENANCE MACHINERY CO.,

Respondent.

PETITION FOR CLARIFICATION OF THE OPINION.

Without again seeking to change the conclusions arrived at by the Court, respondent and its attorneys seek clarification of the Opinion in several respects, which reflect gravely and unnecessarily upon them.

The suggested changes, discussed here, are indicated in red ink on the accompanying copy of this Court's Opinion and are numbered, as in this Petition.

1. Page 2, line 15, cancel the word "entirely".

Defendants never contended that Thomasma claimed that it was *entirely* his own idea. Thomasma swore in his affidavit that he did not have the complete wrench but "only the idea that I had something to work on" (R. 978), that Larson did much of the work "on his own" (R. 963) and that with respect to the tailpiece connecting the flexible beam with the gauge "Larson made that" (R. 1002). Lar-

son's own attorney, Alberts, testified definitely that certain features of the wrench were "his [Larson's] invention" (R. 465).

2. On page 2, 4th line from the bottom, change "in" to *added to*, and in the next line after "those" insert *already*.

This portion of the Opinion gives the erroneous impression that the interference claims originated in the Larson application, whereas they originated in the Zimmerman application and were suggested by the Patent Office to Larson who made them in his application.

3. Page 8, line 9, change "patents" to *Larson patent;* and

3a. Same page, line 22, change "these" to *the* and "patents" to *Larson patent.*

No one has ever contended that the history of the *Zimmerman* patents was in any way tainted with perjury. Indeed, defendant's counsel state in their brief (p. 46) that "there is no question that Zimmerman was entitled to prevail in the Larson-Zimmerman interference • • • • "

4. Page 8, line 11, before "was" insert *insofar as it concerned the interference claims.*

There was no admission by Automotive or its attorneys that Larson's application "was based upon false data" except insofar as the *interference claims* suggested by the Patent Office Examiner were concerned. The application as filed was not based on that data. Defendants pleaded Larson's perjury *only* in connection with the interference *subject matter* (R. 8, 9, Par. 7b; R. 30-1, Par. 30).

5. On page 10, line 17, after "then" insert *cancelled the interference claims.*

The Court's opinion, particularly in the absence of any reference to cancellation of the interference claims from

the Larson Patent, gives the erroneous impression that these claims were retained by Automotive in the Larson application and that the Larson patent contained such claims, and that is not the fact.

6. On page 10, line 21, change "ancestry" to *history*.

The word "ancestry" connotes illegality in the filing of the Larson application and we think the word "history", used antecedently in the Opinion (page 8, line 9), is more apt. Larson, sometime after filing his application, did improperly adopt the broad claims suggested by the Patent Office for interference purposes. He then filed with the Patent Office false oaths with respect to those claims and testified falsely as to them, and to that extent the "*history*" was fraudulent.

7. On page 10, lines 21 and 22 cancel "Automotive thus acted to compound and accentuate the effects of Larsen's perjury"; and

7a. In lines 31 and 32 cancel the sentence "Instead Automotive acted affirmatively to magnify and increase those effects".

These sentences may well imply that Automotive and its counsel were guilty of compounding the perjury as a criminal offense, though we do not believe that was the intent of the majority opinion, the basis of the decision being that Automotive did not advise the Patent Office of Larson's illegal acts in connection with the interference. In this regard we quote what the Court said in its opinion (p. 7, lines 11-14):

> "Accordingly one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character."

The District Court had not at any time or in any way intimated that Automotive and its attorneys had compounded a felony. Defendants sought no such finding (Rec. 1117-25). The Court of Appeals specifically held in effect that there was no such compounding (Rec. 1221-23) and, indeed, defendants made no such contention before this Court.

The prosecution of the application by Automotive's attorney did not "accentuate" nor "magnify and increase" the effects of Larson's interference perjury. The fraudulent interference claims were cancelled and no claims of like character were retained. The prosecution of the application was confined to limited claims clearly distinguishing from the interference claims and from the invention of Zimmerman.

CONCLUSION.

As to the defendants and the public, the effects of the majority opinion would in nowise be disturbed by the clarification sought. The defendants would in no wise be conceivably disadvantaged. The requested clarification would simply avoid misinterpretation resulting in unnecessary reflection upon the reputations of Automotive and its attorneys.

Respectfully submitted,

FRANK PARKER DAVIS,
Attorney for Respondent.

ALBERT J. SMITH,
Of Counsel for Respondent.

I hereby certify that the foregoing Petition is presented in good faith and not for delay.

FRANK PARKER DAVIS.

SUPREME COURT OF THE UNITED STATES.

No. 377.—October Term, 1944.

Precision Instrument Manufacturing Company, Kenneth R. Larson, and Snap-On Tools Corporation, Petitioners,
vs.
Automotive Maintenance Machinery Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 23, 1945.]

Mr. Justice Murphy delivered the opinion of the Court.

The respondent, Automotive Maintenance Machinery Company, charged in two suits that the various petitioners had infringed three patents owned by it relating to torque wrenches.[1] It was further asserted that the allegedly infringing acts also breached several contracts related to the patents. In defense, the petitioners claimed inter alia that Automotive possessed such "unclean hands" as to foreclose its right to enforce the patents and the contracts.

The District Court, at the close of a consolidated trial on the sole issue of Automotive's alleged inequitable conduct, delivered an oral opinion holding that Automotive's hands were soiled to such an extent that all relief which it requested should be denied. This opinion was subsequently withdrawn at the request of one of the witnesses and is not a part of the record. At the same time, however, the court entered written findings of fact and conclusions of law, forming the basis for a judgment dismissing the various complaints and counterclaims "for want of equity." On appeal, the Circuit Court of Appeals reviewed the facts at length and concluded that the District Court's findings of fact were not supported by substantial evidence and that its conclusions of law were not supported by its findings. The judgment was accord-

[1] The three patents involved are No. 2,279,792, issued on April 14, 1942, to Kenneth R. Larson; No. 2,283,888, issued on May 19, 1942, to H. W. Zimmerman; and reissue No. 22,219, issued on November 3, 1942, to H. W. Zimmerman, based on original No. 2,269,503.

ingly reversed. 143 F. 2d 332. We brought the case here because of the public importance of the issues involved.

The basic facts necessary to a determination of the vital issues are clear and without material dispute. In chronological order they may be summarized as follows:

In 1937 and prior thereto Automotive manufactured and sold torque wrenches developed by one of its employees, Herman W. Zimmerman. During this period Snap-On Tools Corporation was one of its customers for these wrenches. Automotive also had in its employ at this time one George B. Thomasma, who worked with Zimmerman and who was well acquainted with his ideas on torque wrenches. In November, 1937, Thomasma secretly gave information to an outsider, Kenneth R. Larson, concerning torque wrenches. Together they worked out plans for a new wrench, although Thomasma claimed that it was ~~entirely~~ his own idea.

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After unsuccessfully trying to interest other distributors, Larson made arrangements to supply Snap-On with the new torque wrench. On October 1, 1938, Larson filed an application for a patent on the newly-developed wrench, which application had been assigned to Snap-On several days prior thereto.[2] Then in December, 1938, Larson, Thomasma and one Walter A. Carlsen organized the Precision Instrument Manufacturing Company to make the wrenches to supply Snap-On's requirements. All three received stock and were elected officers and directors of the new company. Manufacture of the wrenches began in January, 1939, and Precision succeeded in taking away from Automotive all of Snap-On's business. Thomasma continued to work for Automotive until the latter discovered his connection with Precision and discharged him in June, 1939. Thomasma's connection with Precision was also concealed from Snap-On during most of this period.

Subsequently on October 11, 1939, the Patent Office declared an

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interference between certain claims ~~in~~ added to Larson's pending patent application and those already in one filed by Zimmerman. Automotive was the owner of Zimmerman's application. Shortly after the interference was declared, R. E. Fidler, Automotive's attorney, wrote

[2] Snap-On agreed to file the patent application for Larson, who was without funds, and took an assignment of the Larson application as security for performance of the agreement to supply wrenches.

to the president of the company that the "whole situation confronting your opponents in this interference is quite messy, and I will be somewhat surprised if they fight the matter." He further wrote that if there was a contest "they surely will have a lot of explaining to do."

In August, 1940, Larson filed his preliminary statement in the Patent Office proceedings. In it he gave false dates as to the conception, disclosure, drawing, description and reduction to practice of his claimed invention. These dates were designed to antedate those in Zimmerman's application by one to three years. Larson also claimed that he was the sole inventor of his wrench. When Fidler learned of this preliminary statement he immediately suspected that "there must be something wrong with this picture" and suggested to Automotive's president that a "very careful and thorough investigation" be made of the situation. The president agreed. Fidler then employed several investigators who made oral reports to him from time to time. According to Fidler's memoranda of these reports, Fidler learned in great detail in August and September, 1940, the part that Thomasma played in the development of the Larson wrench and in the organization of Precision. He discovered that Thomasma claimed to have invented the wrench and that Larson "was now trying to freeze him out."

From October 24 to November 4, 1940, Larson and eight witnesses testified in the interference proceedings in support of his claims, corroborating his statements as to dates despite cross examination. The day before this testimony ended Thomasma met with Fidler and Automotive's president and stated that he had developed Larson's wrench and that Larson's patent application was a "frame-up." Fidler then procured from Thomasma an eighty-three page statement concerning these matters, which Thomasma swore to on November 15. As the District Court found, this statement or affidavit "related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt of the author's knowledge of the facts."

With these facts before him, Fidler admitted that he "personally was inclined to take the position that I should do something drastic" in the form of taking the matter up with the Pat-

ent Office or the District Attorney. He resolved his problem, however, by submitting it to an outside attorney. The latter advised him that his evidence was insufficient to establish Larson's perjury, that the Patent Office would not consider the matter until all proofs in the interference proceedings were in and that the District Attorney probably would not touch the situation while the interference proceedings were pending. Fidler followed his advice.

A few days later Fidler informed Larson's patent attorney, Harry C. Alberts, of the information disclosed in the Thomasma affidavit. Alberts admitted that "it looked very much like Larson had given false testimony" and asked that further examination of Thomasma be made in his presence. Accordingly, on November 28, Thomasma was examined orally before Alberts, Fidler and officials of Automotive and Snap-On. Thomasma repeated substantially the same story as in his affidavit. Snap-On's president said that if the story were true "the whole thing smells to the high heavens." And Alberts remarked that under the circumstances he felt he would have to withdraw as Larson's attorney.

On the same day, Alberts and Snap-On's president confronted Larson and Carlsen with the Thomasma story and demanded an explanation. Larson refused to commit himself on the truth of Thomasma's account but finally admitted that "my testimony is false and the whole case is false." Alberts then withdrew as their attorney,[3] giving them the names of three other lawyers, including M. K. Hobbs. The fact that Alberts withdrew was communicated by him to Fidler.

Larson and Carlsen called on Hobbs the next day, November 29. They told him they were willing to concede priority in Zimmerman and wanted Hobbs to settle the interference proceedings.[4]

[3] Alberts apparently never withdrew formally as Larson's attorney in the interference proceedings by filing a document to that effect in the Patent Office.

[4] Both Larson and Carlsen testified that they told Hobbs of the perjury and of the predicament they were in, stating to him that they did not want to be turned over to the District Attorney. Hobbs, however, denied that they informed him of these matters. It was at the request of Hobbs that the District Court's oral opinion was withdrawn in order that, in the words of the District Court, it would not be "construed as implying that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct." The court further said that the record demonstrated "that the witness Hobbs did not testify falsely." Assuming that Hobbs gave no false testimony, however, we do not consider that fact to be of controlling significance in this case.

Hobbs took the case on that basis, making no effort to inquire into the reasons for the concession since he considered that matter immaterial. Even when Fidler tried to tell him later about the perjury, Hobbs stopped him for he "didn't want to hear the conflict in testimony."

Hobbs immediately undertook to settle the interference proceedings. On December 2 he proposed a settlement which included a concession of priority by Larson, but this proposal was apparently not satisfactory to all those concerned. Meanwhile Fidler presented the facts to another disinterested lawyer and asked him whether he thought there was enough evidence to bring a conspiracy suit for damages or a criminal action. The lawyer, after admitting that he did not have the slightest doubt but that Thomasma was telling the truth, replied in the negative.

On December 13 Fidler submitted a draft agreement that he had prepared. This draft contained a recital that "it has been determined by the parties hereto and their respective counsel that the party Zimmerman is the prior inventor of the subject matter involved in said Interference No. 77,565, as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications." But this draft was likewise unacceptable.

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Suddenly on the next day, December 20, negotiations were resumed and the parties quickly entered into three contracts, the first two of which are involved in this suit. These contracts, in their relevant parts, provided as follows:

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The Larson application was accordingly assigned to Automotive on December 20, 1940. Automotive subsequently received patents on both the Larson and Zimmerman applications after making certain changes. Then Precision began to manufacture and Snap-On began to sell a new wrench. Automotive claimed that this was an infringement of its patents and a breach of the contracts of December 20, 1940. Thus the suit arose which is now before us.

The guiding doctrine in this case is the equitable maxim that "he who comes into equity must come with clean hands." This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be "the abettor of iniquity." *Bein* v. *Heath*, 6 How. 228, 247. Thus while "equity does not demand that its suitors

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This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is "not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion." *Keystone Driller Co.* v. *General Excavator Co.*, *supra*, 245, 246. Accordingly one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or a tort to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor.

Moreover, where a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public. The determination of when the maxim should be applied to bar this type of suit thus becomes of vital significance. See *Morton Salt Co.* v. *Suppiger Co.*, 314 U. S. 488, 492-494.

In the instant case Automotive has sought to enforce several patents and related contracts. Clearly these are matters concerning far more than the interests of the adverse parties. The possession and assertion of patent rights are "issues of great moment to the public." *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238, 246. See also *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 665; *Morton Salt Co.* v. *Suppiger Co.*, *supra*; *United States* v. *Masonite Corp.*, 316 U. S. 265, 278. A patent by its very nature is affected with a public interest. As recognized by the Constitution, it is a special privilege designed to serve the public purpose of promoting the "Progress of Science and useful Arts." At the same time, a patent is an exception to the general rule against monopolies and to the right to access to a free and open market. The far-reaching social and economic consequences of a patent, therefore, give the public a paramount in-

terest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope. The facts of this case must accordingly be measured by both public and private standards of equity. And when such measurements are made, it becomes clear that the District Court's action in dismissing the complaints and counterclaims "for want of equity" was more than justified.

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3a these perjury-tainted Larson patent ~~patents~~ and contracts.

Automotive contends that it did not have positive and conclusive knowledge of the perjury until the pleadings in the instant proceedings were filed and until Larson admitted his perjury on pretrial examination. It claims that prior thereto it only had Thomasma's affidavit and statements, which were uncorroborated and likely to carry little weight as against Larson and his eight witnesses. It is further pointed out that Fidler submitted what he knew of the facts to at least two independent attorneys, both of whom advised him that the evidence of perjury that he possessed was insufficient. From this it is argued, as the Circuit Court of Appeals held, that while Automotive was "morally certain that Thomasma's story was true", there was no duty to report this uncorroborated information to either the District Attorney or the Patent Office.

But Automotive's hands are not automatically cleansed by its alleged failure to possess sufficiently trustworthy evidence of perjury to warrant submission of the case to the District Attorney or to the Patent Office during the pendency of the interference proceedings. The important fact is that Automotive had every

reason to believe and did believe that Larson's application was fraudulent and his statements perjured. Yet it acted in complete disregard of that belief. Never for a moment did Automotive or its representatives doubt the existence of this fraud. Fidler suspected it soon after he knew of Larson's claims. His suspicions were confirmed by his hired investigators. Then Thomasma revealed such intimate and detailed facts concerning the perjury as to convince all who heard him, despite certain reservations entertained by some persons concerning his trustworthiness. Moreover, Fidler was well aware that Alberts threatened to withdraw as Larson's counsel if he discovered from Larson that Thomasma's story was true and that Alberts in fact did so withdraw. The suspected perjury was further confirmed by Larson's sudden willingness to concede priority after he learned of Thomasma's story and by the admissions by Alberts and Snap-On that Zimmerman "was the prior inventor." And the very fact that Fidler saw fit to submit his proof to outside attorneys for advice is an indication of the substantiality of his belief as to Larson's perjury. With all this evidence before it, however, Automotive pursued the following course of action:

1. It chose to keep secret its belief and allegedly unsubstantial proof of the facts concerning Larson's perjury. We need not speculate as to whether there was sufficient proof to present the matter to the District Attorney. But it is clear that Automotive knew and suppressed facts that, at the very least, should have been brought in some way to the attention of the Patent Office, especially when it became evident that the interference proceedings would continue no longer. Those who have applications pending with the Patent Office or who are parties to Patent Office proceedings have an uncompromising duty to report to it all facts concerning possible fraud or inequitableness underlying the applications in issue. Cf. *Crites, Inc.* v. *Prudential Co.*, 322 U. S. 408, 415. This duty is not excused by reasonable doubts as to the sufficiency of the proof of the inequitable conduct nor by resort to independent legal advice. Public interest demands that all facts relevant to such matters be submitted formally or informally to the Patent Office, which can then pass upon the sufficiency of the evidence. Only in this way can that agency act to safeguard the public in the first instance against fraudulent patent monopolies. Only in that way can the Patent Office and the public escape

10 *Precision Instrument Mfg. Co.* vs. *Auto. Maintenance Mch. Co.*,

from being classed among the "naive and helpless victims of deception and fraud." *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, *supra*, 246.

2. Instead of pursuing the interference proceedings and proving the fact that Zimmerman's claims had priority over those asserted by Larson, Automotive chose to enter into an outside settlement with Larson, Precision and Snap-On, whereby Larson conceded priority. Outside settlements of interference proceedings are not ordinarily illegal. But where, as here, the settlement is grounded upon knowledge or reasonable belief of perjury which is not revealed to the Patent Office or to any other public representative, the settlement lacks that equitable nature which entitles it to be enforced and protected in a court of equity.

3. By the terms of the settlement, Automotive secured the perjured Larson application and exacted promises from the other parties never to question the validity of any patent that might be issued on that application. Automotive then made numerous changes and expansions as to the claims in the application and eventually secured a patent on it without ever attempting to reveal to the Patent Office or to anyone else the facts it possessed concerning the application's fraudulent ~~ancestry~~ history. ~~Automotive thus acted to compound and accentuate the effects of Larson's perjury.~~

These facts all add up to the inescapable conclusion that Automotive has not displayed that standard of conduct requisite to the maintenance of this suit in equity. That the actions of Larson and Precision may have been more reprehensible is immaterial. The public policy against the assertion and enforcement of patent claims infected with fraud and perjury is too great to be overridden by such a consideration. Automotive knew of and suspected the perjury and failed to act so as to uproot it and destroy its effects. ~~Instead, Automotive acted affirmatively to magnify and increase those effects.~~ Such inequitable conduct impregnated Automotive's entire cause of action and justified dismissal by resort to the unclean hands doctrine. *Keystone Driller Co.* v. *General Excavator Co.*, *supra*.

We conclude, therefore, that the evidence clearly supported the District Court's findings of fact and that these findings justified its conclusions of law. The court below erred in reversing its judgment.

Reversed.

Mr. Justice ROBERTS.

I think the writ should be dismissed or the judgment of the Circuit Court of Appeals affirmed. The case ought not to have been taken by this Court. It involves merely the application of acknowledged principles of law to the facts disclosed by the record. Decision here settles nothing save the merits or demerits of the conduct of the respective parties. In my view it is not the function of this Court to weigh the facts for the third time in order to choose between litigants, where appraisal of the conduct of each must affect the result.

Mr. Justice JACKSON is of the opinion that the judgment should be affirmed, as he takes the view of the facts set forth in the opinion of the court below. 143 F. 2d 332.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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PRECISION INSTRUMENT MANUFACTURING COMPANY, KENNETH R. LARSON AND SNAP-ON TOOLS CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY CO.,

Respondent.

REPLY TO RESPONDENT'S PETITION FOR CLARIFICATION OF THE OPINION.

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

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REPLY TO RESPONDENT'S PETITION FOR CLARIFICATION OF THE OPINION.

Respondent's petition for clarification of the Court's opinion rendered on April 23, 1945, is nothing more than a second attempt at reformation, the first "petition for rehearing, or reformation of opinion" having been denied on May 21, 1945, by this Court.

This second attempt seeks two things:

(1) to segregate the two Zimmerman patents in suit from the taint of the Larson patent, and

(2) to obliterate all reference to respondent's affirmative conduct to accentuate and increase the effects of Larson's perjury.

(1)

The proposed reformation of this Court's opinion to segregate the two Zimmerman patents from the taint of the Larson patent, is contrary to the rule announced by this Court in *Keystone Driller Co.* v. *General Excavator Co.*, 290 U.S. 240, 245, repeatedly cited in its opinion to which the present petition is directed. To grant this relief would, in effect, serve to overrule the *Keystone Driller case* which defines the guiding doctrine supporting the "unclean hands" maxim in an exactly parallel situation.

In the *Keystone case* this Court held that the defense of "unclean hands" should have been sustained and that (although plaintiff was suing on five patents, four of which were admittedly valid) by reason of the fraud practiced upon the court in suppressing evidence respecting the prior use of the fifth patent, plaintiff's misconduct was directly related to the subject-matter of its cause of action for infringement, and that it should be denied relief.

In the instant case the two Zimmerman patents are tied to the same transactions whereby plaintiff acquired title to the Larson patent and tied to the "contract estoppels" upon which respondent relies in attempting to enforce all three patents. Therefore, respondent's attempted reformation is contrary to the guiding doctrine.

(2)

The record supports the factual recitals and conclusions drawn by this Court as to respondent's conduct in furthering its own interests based upon its knowledge of Larson's perjury.

These acts, coupled with the continued prosecution and inclusion of expanded claims in the Larson patent, which

has a false ancestry by reason of being grounded on a false original oath by Larson instead of Thomasma alone (R. 323) or at best by Thomasma and Larson (R. 462), served "to compound and accentuate the effects of Larson's perjury" and establish that "Automotive acted affirmatively to magnify and increase those effects." The removal of these moderate conclusions would not clarify but obscure this Court's opinion.

CONCLUSION.

The record shows beyond a doubt that the Larson patent application had a "fraudulent ancestry" and was steeped in perjury from its inception.

The factual recitals in this Court's opinion are correct, and, therefore, reformation under the guise of clarification should be refused, and Petitioners so pray.

Respectfully submitted,

WILL FREEMAN,
CASPER W. OOMS,
Attorneys for Petitioners.

Chicago, Illinois,
June 13, 1945.

SUPREME COURT OF THE UNITED STATES.

No. 377.—October Term, 1944.

Precision Instrument Manufacturing Company, Kenneth R. Larson, and Snap-On Tools Corporation, Petitioners, *vs.* Automotive Maintenance Machinery Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 23, 1945.]

Mr. Justice Murphy delivered the opinion of the Court.

The respondent, Automotive Maintenance Machinery Company, charged in two suits that the various petitioners had infringed three patents owned by it relating to torque wrenches.[1] It was further asserted that the allegedly infringing acts also breached several contracts related to the patents. In defense, the petitioners claimed inter alia that Automotive possessed such "unclean hands" as to foreclose its right to enforce the patents and the contracts.

The District Court, at the close of a consolidated trial on the sole issue of Automotive's alleged inequitable conduct, delivered an oral opinion holding that Automotive's hands were soiled to such an extent that all relief which it requested should be denied. This opinion was subsequently withdrawn at the request of one of the witnesses and is not a part of the record. At the same time, however, the court entered written findings of fact and conclusions of law, forming the basis for a judgment dismissing the various complaints and counterclaims "for want of equity." On appeal, the Circuit Court of Appeals reviewed the facts at length and concluded that the District Court's findings of fact were not supported by substantial evidence and that its conclusions of law were not supported by its findings. The judgment was accord-

[1] The three patents involved are No. 2,279,792, issued on April 14, 1942, to Kenneth R. Larson; No. 2,283,888, issued on May 19, 1942, to H. W. Zimmerman; and reissue No. 22,219, issued on November 3, 1942, to H. W. Zimmerman, based on original No. 2,269,503.

ingly reversed. 143 F. 2d 332. We brought the case here because of the public importance of the issues involved.

The basic facts necessary to a determination of the vital issues are clear and without material dispute. In chronological order they may be summarized as follows:

In 1937 and prior thereto Automotive manufactured and sold torque wrenches developed by one of its employees, Herman W. Zimmerman. During this period Snap-On Tools Corporation was one of its customers for these wrenches. Automotive also had in its employ at this time one George B. Thomasma, who worked with Zimmerman and who was well acquainted with his ideas on torque wrenches. In November, 1937, Thomasma secretly gave information to an outsider, Kenneth R. Larson, concerning torque wrenches. Together they worked out plans for a new wrench, although Thomasma claimed that it was entirely his own idea.

After unsuccessfully trying to interest other distributors, Larson made arrangements to supply Snap-On with the new torque wrench. On October 1, 1938, Larson filed an application for a patent on the newly-developed wrench, which application had been assigned to Snap-On several days prior thereto.[2] Then in December, 1938, Larson, Thomasma and one Walter A. Carlsen organized the Precision Instrument Manufacturing Company to make the wrenches to supply Snap-On's requirements. All three received stock and were elected officers and directors of the new company. Manufacture of the wrenches began in January, 1939, and Precision succeeded in taking away from Automotive all of Snap-On's business. Thomasma continued to work for Automotive until the latter discovered his connection with Precision and discharged him in June, 1939. Thomasma's connection with Precision was also concealed from Snap-On during most of this period.

Subsequently on October 11, 1939, the Patent Office declared an interference between certain claims in Larson's pending patent application and those in one filed by Zimmerman. Automotive was the owner of Zimmerman's application. Shortly after the interference was declared, R. E. Fidler, Automotive's attorney, wrote

[2] Snap-On agreed to file the patent application for Larson, who was without funds, and took an assignment of the Larson application as security for performance of the agreement to supply wrenches.

to the president of the company that the "whole situation confronting your opponents in this interference is quite messy, and I will be somewhat surprised if they fight the matter." He further wrote that if there was a contest "they surely will have a lot of explaining to do."

In August, 1940, Larson filed his preliminary statement in the Patent Office proceedings. In it he gave false dates as to the conception, disclosure, drawing, description and reduction to practice of his claimed invention. These dates were designed to antedate those in Zimmerman's application by one to three years. Larson also claimed that he was the sole inventor of his wrench. When Fidler learned of this preliminary statement he immediately suspected that "there must be something wrong with this picture" and suggested to Automotive's president that a "very careful and thorough investigation" be made of the situation. The president agreed. Fidler then employed several investigators who made oral reports to him from time to time. According to Fidler's memoranda of these reports, Fidler learned in great detail in August and September, 1940, the part that Thomasma played in the development of the Larson wrench and in the organization of Precision. He discovered that Thomasma claimed to have invented the wrench and that Larson "was now trying to freeze him out."

From October 24 to November 4, 1940, Larson and eight witnesses testified in the interference proceedings in support of his claims, corroborating his statements as to dates despite cross examination. The day before this testimony ended Thomasma met with Fidler and Automotive's president and stated that he had developed Larson's wrench and that Larson's patent application was a "frame-up." Fidler then procured from Thomasma an eighty-three page statement concerning these matters, which Thomasma swore to on November 15. As the District Court found, this statement or affidavit "related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt of the author's knowledge of the facts."

With these facts before him, Fidler admitted that he "personally was inclined to take the position that I should do something drastic", in the form of taking the matter up with the Pat-

ent Office or the District Attorney. He resolved his problem, however, by submitting it to an outside attorney. The latter advised him that his evidence was insufficient to establish Larson's perjury, that the Patent Office would not consider the matter until all proofs in the interference proceedings were in and that the District Attorney probably would not touch the situation while the interference proceedings were pending. Fidler followed his advice.

A few days later Fidler informed Larson's patent attorney, Harry C. Alberts, of the information disclosed in the Thomasma affidavit. Alberts admitted that "it looked very much like Larson had given false testimony" and asked that further examination of Thomasma be made in his presence. Accordingly, on November 28, Thomasma was examined orally before Alberts, Fidler and officials of Automotive and Snap-On. Thomasma repeated substantially the same story as in his affidavit. Snap-On's president said that if the story were true "the whole thing smells to the high heavens." And Alberts remarked that under the circumstances he felt he would have to withdraw as Larson's attorney.

On the same day, Alberts and Snap-On's president confronted Larson and Carlsen with the Thomasma story and demanded an explanation. Larson refused to commit himself on the truth of Thomasma's account but finally admitted that "my testimony is false and the whole case is false." Alberts then withdrew as their attorney,[3] giving them the names of three other lawyers, including M. K. Hobbs. The fact that Alberts withdrew was communicated by him to Fidler.

Larson and Carlsen called on Hobbs the next day, November 29. They told him they were willing to concede priority in Zimmerman and wanted Hobbs to settle the interference proceedings.[4]

[3] Alberts apparently never withdrew formally as Larson's attorney in the interference proceedings by filing a document to that effect in the Patent Office.

[4] Both Larson and Carlsen testified that they told Hobbs of the perjury and of the predicament they were in, stating to him that they did not want to be turned over to the District Attorney. Hobbs, however, denied that they informed him of these matters. It was at the request of Hobbs that the District Court's oral opinion was withdrawn in order that, in the words of the District Court, it would not be "construed as implying that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct." The court further said that the record demonstrated "that the witness Hobbs did not testify falsely." Assuming that Hobbs gave no false testimony, however, we do not consider that fact to be of controlling significance in this case.

Hobbs took the case on that basis, making no effort to inquire into the reasons for the concession since he considered that matter immaterial. Even when Fidler tried to tell him later about the perjury, Hobbs stopped him for he "didn't want to hear the conflict in testimony."

Hobbs immediately undertook to settle the interference proceedings. On December 2 he proposed a settlement which included a concession of priority by Larson but this proposal was apparently not satisfactory to all those concerned. Meanwhile Fidler presented the facts to another disinterested lawyer and asked him whether he thought there was enough evidence to bring a conspiracy suit for damages or a criminal action. The lawyer, after admitting that he did not have the slightest doubt but that Thomasma was telling the truth, replied in the negative.

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terest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope. The facts of this case must accordingly be measured by both public and private standards of equity. And when such measurements are made, it becomes clear that the District Court's action in dismissing the complaints and counterclaims "for want of equity" was more than justified.

The history of the patents and contracts in issue is steeped in perjury and undisclosed knowledge of perjury. Larson's application was admittedly based upon false data which destroyed whatever just claim it might otherwise have had to the status of a patent. Yet Automotive, with at least moral and actual certainty if not absolute proof of the facts concerning the perjury, chose to act in disregard of the public interest. Instead of doing all within its power to reveal and expose the fraud, it procured an outside settlement of the interference proceedings, acquired the Larson application itself, turned it into a patent and barred the other parties from ever questioning its validity. Such conduct does not conform to minimum ethical standards and does not justify Automotive's present attempt to assert and enforce these perjury-tainted patents and contracts.

Automotive contends that it did not have positive and conclusive knowledge of the perjury until the pleadings in the instant proceedings were filed and until Larson admitted his perjury on pretrial examination. It claims that prior thereto it only had Thomasma's affidavit and statements, which were uncorroborated and likely to carry little weight as against Larson and his eight witnesses. It is further pointed out that Fidler submitted what he knew of the facts to at least two independent attorneys, both of whom advised him that the evidence of perjury that he possessed was insufficient. From this it is argued, as the Circuit Court of Appeals held, that while Automotive was "morally certain that Thomasma's story was true" there was no duty to report this uncorroborated information to either the District Attorney or the Patent Office.

But Automotive's hands are not automatically cleansed by its alleged failure to possess sufficiently trustworthy evidence of perjury to warrant submission of the case to the District Attorney or to the Patent Office during the pendency of the interference proceedings. The important fact is that Automotive had every

reason to believe and did believe that Larson's application was fraudulent and his statements perjured. Yet it acted in complete disregard of that belief. Never for a moment did Automotive or its representatives doubt the existence of this fraud. Fidler suspected it soon after he knew of Larson's claims. His suspicions were confirmed by his hired investigators. Then Thomasma revealed such intimate and detailed facts concerning the perjury as to convince all who heard him, despite certain reservations entertained by some persons concerning his trustworthiness. Moreover, Fidler was well aware that Alberts threatened to withdraw as Larson's counsel if he discovered from Larson that Thomasma's story was true and that Alberts in fact did so withdraw. The suspected perjury was further confirmed by Larson's sudden willingness to concede priority after he learned of Thomasma's story and by the admissions by Alberts and Snap-On that Zimmerman "was the prior inventor." And the very fact that Fidler saw fit to submit his proof to outside attorneys for advice is an indication of the substantiality of his belief as to Larson's perjury. With all this evidence before it, however, Automotive pursued the following course of action:

1. It chose to keep secret its belief and allegedly unsubstantial proof of the facts concerning Larson's perjury. We need not speculate as to whether there was sufficient proof to present the matter to the District Attorney. But it is clear that Automotive knew and suppressed facts that, at the very least, should have been brought in some way to the attention of the Patent Office, especially when it became evident that the interference proceedings would continue no longer. Those who have applications pending with the Patent Office or who are parties to Patent Office proceedings have an uncompromising duty to report to it all facts concerning possible fraud or inequitableness underlying the applications in issue. Cf. *Crites, Inc.* v. *Prudential Co.*, 322 U. S. 408, 415. This duty is not excused by reasonable doubts as to the sufficiency of the proof of the inequitable conduct nor by resort to independent legal advice. Public interest demands that all facts relevant to such matters be submitted formally or informally to the Patent Office, which can then pass upon the sufficiency of the evidence. Only in this way can that agency act to safeguard the public in the first instance against fraudulent patent monopolies. Only in that way can the Patent Office and the public escape

from being classed among the "mute and helpless victims of deception and fraud." *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, *supra*, 246.

2. Instead of pursuing the interference proceedings and proving the fact that Zimmerman's claims had priority over those asserted by Larson, Automotive chose to enter into an outside settlement with Larson, Precision and Snap-On, whereby Larson conceded priority. Outside settlements of interference proceedings are not ordinarily illegal. But where, as here, the settlement is grounded upon knowledge or reasonable belief of perjury which is not revealed to the Patent Office or to any other public representative, the settlement lacks that equitable nature which entitles it to be enforced and protected in a court of equity.

3. By the terms of the settlement, Automotive secured the perjured Larson application and exacted promises from the other parties never to question the validity of any patent that might be issued on that application. Automotive then made numerous changes and expansions as to the claims in the application and eventually secured a patent on it without ever attempting to reveal to the Patent Office or to anyone else the facts it possessed concerning the application's fraudulent ancestry. Automotive thus acted to compound and accentuate the effects of Larson's perjury.

These facts all add up to the inescapable conclusion that Automotive has not displayed that standard of conduct requisite to the maintenance of this suit in equity. That the actions of Larson and Precision may have been more reprehensible is immaterial. The public policy against the assertion and enforcement of patent claims infected with fraud and perjury is too great to be overridden by such a consideration. Automotive knew of and suspected the perjury and failed to act so as to uproot it and destroy its effects. Instead, Automotive acted affirmatively to magnify and increase those effects. Such inequitable conduct impregnated Automotive's entire cause of action and justified dismissal by resort to the unclean hands doctrine. *Keystone Driller Co.* v. *General Excavator Co.*, *supra*.

We conclude, therefore, that the evidence clearly supported the District Court's findings of fact and that these findings justified its conclusions of law. The court below erred in reversing its judgment.

Reversed.

Mr. Justice ROBERTS.

I think the writ should be dismissed or the judgment of the Circuit Court of Appeals affirmed. The case ought not to have been taken by this Court. It involves merely the application of acknowledged principles of law to the facts disclosed by the record. Decision here settles nothing save the merits or demerits of the conduct of the respective parties. In my view it is not the function of this Court to weigh the facts for the third time in order to choose between litigants, where appraisal of the conduct of each must affect the result.

Mr. Justice JACKSON is of the opinion that the judgment should be affirmed, as he takes the view of the facts set forth in the opinion of the court below. 143 F. 2d 332.